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HEARING OF OCTOBER 25, 1943.

1801

PROCEEDINGS RESUMED.

Chairman Myers: All right, gentlemen; we are ready to resume.

Mr. Hassell: I would like to make a little opening statement before we proceed with this witness.

Saturday night for the first time I saw the record, and since I don't want to be accused of pulling a rabbit out of the hat when we come to arguing this thing, I think it is up to me to make a statement.

Chairman Myers: All right.

1802

Mr. Hassell: In the opening statement, in my statement, I see that my statement at page 7 of the record is not sufficiently full. Counsel in his statement at page 17 of the record indicated after I made that statement that he was still in doubt, as was indicated by certain portions of his answer that I moved should be stricken. This had to do with the alternative, in the event that this Board should decide that there is nothing in these issues the matters are still non-mailable.

The position of the Department is that even then the matters are still of such a character that the publication does not comply with the fourth condition of the second-class Act. That is an alternative position that we propose to take in arguing this case.

1803

Now, if counsel is, by reason of anything that I have stated here, misled, or if he thinks he has been misled, that he would have taken a different course in the examination of the witnesses that he

Colloquy.

1804

has produced here or the witness I have produced, I am willing to enter into a stipulation with him to cover that.

Mr. Bromley: What kind of stipulation?

Mr. Hassell: Well, if in any way you think you would have produced different testimony from these witnesses. In other words, I have from the outset of this case endeavored in every way I knew how to be as frank and as free with the Respondents so that they should not be taken by surprise.

1805

As a matter of fact, as I recall when I first talked with Mr. Harding and Mr. Gingrich about this matter, after the citation had been served, I mentioned this matter. I will confess that since then I have concentrated so on this non-mailable thing that I have temporarily or apparently from what I have said overlooked the other feature.

But it is an alternative proposition, and I think this Board should give due consideration to that in the event they should decide that they will not accept a ruling of the Solicitor as to the mailability of these matters, and will set that aside and decide the publication is mailable.

1806

We should then consider the other, the alternative. Is it matter, as contemplated in the fourth condition of the second-class Act—does it comply with that by reason, of course, of its objectionable character?

Mr. Harding: I am somewhat surprised, Mr. Hassell, because I understood that you were willing to stipulate that we complied with the fourth condition except insofar as the matter might be non-mailable under the obscenity statute.

Colloquy.

I had witnesses here on the general character of the magazine whom I dismissed, because I understood that that was your position.

1807

Mr. Hassell: My position is that you comply with the first three paragraphs of the second-class Act.

Mr. Harding: Do you have a copy of your letter to me, Mr. Hassell?

Mr. Hassell: Yes, I have read that. Apparently I did not have this in mind at that time. In other words, I didn't emphasize that at the time.

I did in this letter—I will be glad to have it go into the record—say that we were relying on the citation and, to paraphrase that, the charges in the citation here, and we contend that this matter comes under Section B of the citation.

1808

Then, this letter of October 8, 1943—do you want me to read it?

Mr. Harding: The paragraph with relation to that.

Mr. Hassell: Page 1, the third paragraph:

"The rule or citation charges that each of the issues of 'Esquire' named therein is non-mailable under 18 U. S. C. 334; that because of the inclusion of such matter the publication has not fulfilled the qualifications of the Fourth condition of the Second-Class Act, 39 U. S. Code, 226; and that the publication, by reason of the inclusion therein in a generally uniform and systematic manner of matter in violation of 18 U. S. Code 334, is not a mailable periodical publication of the second class of mailable matter. As I explained to you when you called here, I shall not contend in the hearing aside from the non-mailable obscenity angle that the publication does

1809

Colloquy.

1810

not comply with the Fourth condition of the Second Class Act."

I should not have said that.

Mr. Bromley: I think you should. That is perfectly accurate and perfectly sound.

Mr. Hassell: That is not in accord with the understanding I had with Mr. Harding.

Mr. Harding: That is what I understood.

Mr. Hassell: When I conversed with you didn't you get a different idea?

Mr. Harding: No, I did not. That is why I wrote you.

Mr. Hassell: I thought I was perfectly plain in discussing with you this particular feature.

Mr. Harding: I admit I had some doubt about it, so I wrote you, and after I got this letter I thought we were perfectly clear on it.

Mr. Hassell: After you included in your answer matter which would indicate you were proceeding along the lines of our previous conversation—

Mr. Harding: I included in the answer what was necessary.

In what respect don't we comply with the fourth condition?

Mr. Hassell: Our position is that it is inconceivable that Congress created the second-class privilege for the publication of this sort which consistently and persistently carries that type of objectionable matter.

Mr. Harding: What particular words of the fourth condition don't we comply with? That is what I am still interested in.

Mr. Hassell: The fourth condition of 39 U. S. Code 236: "It must be originated and published for

1812

Colloquy.

the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry".

1813

Mr. Harding: That is what you claim?

Mr. Hassell: By reason of carrying this type of objectionable material.

Mr. Harding: We must be a hundred per cent included within those things?

Mr. Hassell: That is our contention.

Mr. Harding: Well, that does put us in a position of having excused some witnesses. I would like to consider some possible stipulation with you. Suppose I try and work out something.

1814

Mr. Hassell: All right.

Chairman Myers: I got the impression myself at the outset that Mr. Hassell was not waiving anything; that he was going to stand on the notice as served. I just got that generally.

Mr. Hassell: That is what I intended to convey but I confess some of the things I said especially in this letter are not clear.

Chairman Myers: I don't know about that but I got the impression from your opening statement that you were going to rely on everything that was set forth in the notice. How, I got the impression, I don't know, but that was the impression; how I got it I don't know.

1815

Mr. Bromley: Of course, that ground was not set forth in the citation, Mr. Myers.

Chairman Myers: Yes, I think it was.

Mr. Bromley: No; no claim that we did not come under the fourth condition.

Mr. Hassell: We contend that that is embraced in paragraph (b).

Colloquy.

1816

Chairman Myers: Paragraph "b" says: "That because of the inclusion of such matter in the publication it has not fulfilled the qualifications of second-class mailing privileges established by the fourth condition of 20 Stat. 359 (39 U. S. C., Sec. 226)".

Mr. Harding: The "such matter" relates back to 18 U. S. C. 334, which is the obscenity statute.

Chairman Myers: I beg your pardon?

Mr. Harding: The "such matter" relates back to 18 U. S. C. 334, which is the obscenity statute.

Chairman Myers: This fourth condition is the fourth condition of the classification act.

Mr. Harding: But the "such matter" referred to in the citation, "because of the inclusion of such matter", and sub-paragraph b.—

Chairman Myers: Yes.

Mr. Harding: —refers back, as I understood it, to "a", 18 U. S. C. 334, the obscenity statute.

Chairman Myers: Well, 18 does not have the effect and force of that, does it?

Mr. Harding: I thought it did.

Chairman Myers: Well, I guess we are clear on that point then.

Mr. Hassell: In order to save the time of the Board and the Respondent, and myself, I wonder if counsel would be willing to stipulate from now on with reference to this witness, that his testimony will be substantially similar to that of Dr. Tillotson?

Mr. Bromley: I should have been glad, if the Board pleases, to make that stipulation before the witness testified. I don't see how I can do it in the middle of his testimony because his testimony has already been different from that which Dr. Tillotson gave.

1817

Colloquy.

Mr. Hassell: I have reference to those matters about which this witness has not already testified, with particularity. In other words, so far as cross examination we will understand that this gentleman's further testimony would be substantially similar to that of Dr. Tillotson.

1819

Mr. Bromley: No, I don't believe it would.

Mr. Hassell: In other words, I will have to go through this matter in detail and tire this witness out and tire everybody out.

Mr. Bromley: You have already accomplished that purpose. I don't see how you can take that position in the middle of the witness' testimony.

1820

Mr. Hassell: All right.

Mr. Bromley: If you will now announce that you will do that with future witnesses before they start and give me a chance to make up my mind on that, of course I will do it, but I don't want to do it in the middle of a witness' testimony.

Mr. Hassell: Well, where you have cumulative testimony, as I understand it, I think it is within the discretion of the Board to determine whether we would hear such cumulative testimony. We might stay here for ten years if you are going to bring all the psychiatrists of the United States here.

1821

Chairman Myers: I think the general rule on that is three witnesses on the same point.

Mr. Bromley: Well, three witnesses on the same point. Of course, this is not duplication at all.

Chairman Myers: No, I understand it.

Mr. Hassell: I would be glad to go ahead with the witness.

Clements C. Fry—for Respondent—Cross.

1822 CLEMENTS C. FRY, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination by Mr. Hassell (Continued):

Q. Doctor, what is the difference between a psychiatrist and a neuro-psychiatrist? A. Well, a psychiatrist is a physician who confines his work to the diagnosis and treatment of mental disorders and so-called nervous disorders and emotional factors and personality problems and so on.

1823 A neuro-psychiatrist is a man who is a psychiatrist but is also trained in neurology and has to do with the definite organic neurological diseases.

Q. Which of those are you, Doctor? A. I am a psychiatrist.

Q. You are a psychiatrist? A. I am a psychiatrist.

Q. Doctor, will you admit that the Varga girls as shown in these issues of Esquire would be attractive to the young adolescent boy? A. I think they would be attractive, yes.

Q. In what way? A. I think he would notice them. He might comment on them and he might be somewhat stimulated by them.

1824 Q. Now, would you say that these pictures are calculated to glorify the American girl? A. Glorify her?

Q. Yes. A. I suppose in a Ziegfeld way as you used that term.

Q. Just how is that, Doctor? A. I think that he emphasized the good-looking, well-built individual and the chorus girl type of individual and he claimed that was the American girl. Now, I don't know whether it is or not.

Q. But if these figures are out of proportion and having feet too large and limbs too long, you wouldn't think that

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would glorify the American girl, would you? A. Not if that statement was true.

1825

Q. Now, Doctor, I believe we were at page 123 of the January issue, the "Dear Doctor Diddle" joke or whatever it may be called. Would you agree with the Century Dictionary definition of "diddle" as follows:

"To move rapidly up and down or back and forward"? A. Well, I can't disagree with the dictionary, but I think there is, as it is used with a youngster—I think there are several sides to it, and one is that to diddle around means to fool around. They use it in terms of petting and kissing, and I think they also use it in terms of definite intercourse. I think it has several meanings as used by these youngsters, and it is according to who the youngster is, I guess.

1826

Q. How do you think it is used here? A. As a matter of fact, that first joke I couldn't understand myself. That is the "Dear Doctor Diddle" joke. It reads:

"I am a young woman and I want the boys to like me, but every time I take my Scottie for a walk they admire her more than they do me—what shall I do?"

That goes over my head, I am sorry to say.

Q. I don't understand that is the one we are talking about. A. Which one are you talking about?

Q. This is the second item on page 123, fourth column:

"Dear Doctor Diddle: 'I am a beautiful brunette but I have a serious problem—every time I take a bath I blush. What shall I do?'"

1827

And the reply:

"Before you undress, put on a blindfold." A. That also went over my head a bit. I couldn't quite see what they are trying to arrive at, honestly.

Q. Now, let's refer to page 137—that is the January issue. We have the air raid warden picture in color—black and

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1828

some color on it—two air raid wardens at a skylight on top of the building, one looking through the skylight with his fingers in his mouth and his eyes very wide open, and the legend underneath, "And to think I gave up drawing."

What is your thought as to what this man looking in the skylight sees, Doctor? A. I suppose there is a woman involved and, whether it is a question of physique or act, or what, I don't know. It brings a lot of things to mind. It may be just a question of a petting going on which this fellow feels is amusing, or it may be that a girl is undressing or it may be dozens of things, I should say.

1829

Q. Which one do you think is the reasonable assumption? A. It is according to your own way of thinking, to my way of looking at it.

Q. Doctor, we have here a man's magazine and we have seen a number of risque cartoons and jokes.

Taking these things into consideration, and also the comments in "The Sound and the Fury" column of the publication, would you think it would be natural to assume that he is somewhat entranced by a nude he sees through this studio skylight? A. A nude or a partial nude perhaps.

Q. Now, the February issue, Doctor. I believe you testified that there is nothing obscene, lewd, lascivious, or indecent about the Varga girl picture on page 34 of this issue?

A. That is right.

Q. She is rather scantily clad, isn't she, Doctor? A. Yes, I think so.

Q. What would you call that costume, a night dress of some sort? A. I would assume that would be the thing.

Q. And it is quite transparent, isn't it? A. Yes.

Q. And, it is manifest, is it not, that she has nothing on underneath it? A. Yes.

1830

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Q. And this model is in a recumbent position, isn't she?
A. Yes.

1831

Q. Now, page 65, the cartoon: "What am I bid for this one hundred pounds of sugar?"—this lady apparently being sold—or woman being sold—and I ask if her hair is dressed in Oriental style, Doctor, or can you tell? A. I can't say.

Q. She has what she might call a semi-bob. She doesn't have full-length hair, does she? A. No, that is right.

Q. And you would say that possibly she has a permanent wave? A. I would say so, yes.

Q. And would you say that she looks possibly more American than she does Turkish, or whatever this scene is supposed to represent? A. Oh, she is not Turkish, so far as I know.

1832

Q. In other words, she does not appear to be the near-East type, does she? A. No.

Q. She has light hair, rather Nordic features, and yet we have this auction sale where she is being sold by this sheik-like person with the fez and the people in the foreground and those you can see in the background are possibly from North Africa or Arabia or Egypt where they wear such clothes.

In view of those considerations, Doctor, do you think this cartoon is entirely without any connotation of indecency? A. Yes, of indecency.

1833

Q. It is entirely without any such connotation? A. I think so.

Q. That American-looking girl with light hair is here being sold as a sack of sugar to certain near-East persons. You think that is not— A. Not necessarily, no; not to my mind.

Q. You say "not necessarily". Do you mean not at all, that you couldn't get such a connotation from it? A. Some people could get that connotation, yes.

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1834

Q. But you would not? A. I would not, no.

Q. Doctor, did you read the article "Home Sweet Ruby Street" on pages 76 and 77 of the February issue of Esquire? A. Yes. Again, I might say I had a little time with that. I didn't read this one three times.

Q. You didn't? A. I read it once and it was a little hard going.

Q. It was a little hard reading it once, was it, Doctor? You mean it was hard to follow or lacking in interest?

A. Well, it was a question of the vernacular, I suppose.

Q. Or was it a little too dirty in its implications? A. No, it wasn't dirty to me.

1835

Q. It wasn't dirty at all? A. No.

Q. You take the position that depicting by word or picture or cartoon such scenes as are depicted by this story—it is labeled fiction—has no indecent connotation at all? A. Not any indecent connotations, no.

Q. Now, you will note the cartoon which shows the colored woman, somewhat stout, seated in a chair in the right foreground of the picture. A. Yes.

Q. Now the foreground of the picture has a young colored man in the act of putting on his trousers? A. That is right.

1836

Q. He is starting to insert his left leg in the trousers. In the background center is what may be a young colored woman putting a dress or something over her head. In the right foreground two apparently older colored people, the woman having a slip of paper or something in her hand. Then, to the left of the cartoon, is this statement: "Mrs. Finn entered with considerable alacrity." The story shows that that is the woman seated in the chair in the right foreground.

"Mrs. Finn entered with considerable alacrity the living quarters of the Vermillion family. She noted with regret

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that Society had not yet arrived due in part to the early hour, in part, perhaps to the fact that the Vermillion's bowing daughter, Mrs. Edna Wilson and her fiance, Radiant, were not yet up. They arose when Mrs. Finn entered, sulkily rubbing their glossy fists against their cheeks. Mrs. Finn, on noting them, longed for a fan, but blamed it giddily on the Springtime."

1837

Then in the center column of that page, near the center of the column, it is stated:

"It was not the response Mrs. Finn had hoped for, and left her at rather loose ends. Thinking it better to begin afresh, she fastened her good eye severely on her notebook and presently flung at Mrs. Vermillion a new leaf, the writing on which became slightly furry as her wandering eye, cast presumably in the direction of the ceiling, caught Edna and Radiant gingerly dressing. Radiant, only half clad and suspecting the vagrant eye to be focused on him, winked slowly at Mrs. Finn."

1838

You still say that scene so depicted and described has no indecent connotation? A. Not an indecent connotation. I think it is again depicting what such, shall I call them, level of colored society might do. What their life is, how they live, what is their behavior from a sex standpoint.

1839

In certain sections of the country it is a fact apparently that the colored do not bother to get married; they don't feel it is so important to be married, and they live with each other, and so on; that they do lay emphasis on this side of life. I mean, that is the way I would look on this thing.

Q. But, Doctor, what would you think would be the reason for including such a story as this in a publication of this sort? A. I would say it was an informative type of information.

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1840

Q. You would think that the average reader of Esquire would be just inquiring into the intimate details and the manner in which a certain part or possibly all of the colored race conducts itself within the confines of its own home? A. I would think it would enter as to a lot of people.

1841

Q. You think that this type of article in Esquire delving into such details, into matters of this sort, has no objectionable or suggestive, or indecent connotations whatsoever? A. No, I don't think so. I would think this, it would bother certain people who have certain religious ideas and backgrounds and so forth, but to a great many youngsters I think reading that thing, they would look upon it more or less as a sociological article and having to do with how people are living, and we are interested in that; interested in how the other fellow on the other side of the track lives.

Mr. Cargill: Doctor, if the word "fiction" were not included in this article, would it have any bearing on this thing?

The Witness: Pardon me?

Mr. Cargill: Would the word "fiction" as appearing there have any bearing on your answer?

The Witness: If the word "fiction" were there?

Mr. Cargill: Yes.

The Witness: No, I don't think so.

1842

By Mr. Hassell:

Q. Now, Doctor, referring to "The Unsinkable Sailor" on page 95 of the February issue. That starts at page 30. A. Yes, I read the whole thing.

Q. And it is the denominated "article". You noticed that

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as you read it, Doctor? A. I read that, I think, twice. I
don't know whether I read it three times or not.

1843

Q. You really could stand reading it twice? A. Yes.

Q. Why did you have to read it twice, to understand it? A. No, I was very interested.

Q. Now, in the first column on page 95, that is a long paragraph there, beginning "but Showboat," then down past the center of that paragraph:

"In Las Palmas he went to work as a sort of contact man for an establishment known as the 'Black Cat,' and the less said about that phase of his life, the better."

What would you say that indicates as to the type of work he was engaged in? A. He was a pimp, most probably.

1844

Q. He was a pimp? A. Yes.

Q. Now dropping down past the next paragraph, into the third paragraph of that column, starting "I take the deck at a union meeting," the last sentence or two reads: "I grabbed a piece of the broken glass and I yelled: 'The first son-of-a-bitch that moves I'll cut his head off.' They left the room—but I went to the hospital."

Doctor, do you say that that word, the use of that word is not filthy? A. Yes. I think it is getting into the culture more or less. For instance, one time they never allowed us to use the terms gonorrhea or syphilis over the radio or in articles. Now people are using those terms, and son-of-a-bitch is getting into a lot of literature all over the place.

1845

Q. And you say "son-of-a-bitch" is getting respectable now? A. It is being referred to. It used to be when we talked about the "bastard son of England," or what not, I think it has taken on the same implications as "bastard" took on, a certain phase of our civilization.

Q. Time has been, Doctor, in referring to the past, that that was what was known as a fighting word, wasn't it?

A. That is right, absolutely.

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1846

Q. Reflecting upon the parentage of the mother? A. That is right.

Q. Of the person to whom the term is applied? A. That is right.

Q. Now you think the term is entirely decent? A. Well, they use it. The soldiers meet and they say, "You old son-of-a-bitch," they comment on it. They address each other with such affectionate terms.

Q. Well, Doctor, it wasn't used with that meaning here. A. No, not at all.

1847 Q. It says, "The first sonovabitch that moves I'll cut his head off." A. That is right.

Q. In other words it was used as a depreciating and derogatory and insulting epithet here? A. That is right.

Q. It was used in its worst connotation? A. If you say "derogatory," yes.

Q. But you say it is not filthy? A. No, I wouldn't say it was filthy.

Q. Now you recall this story, don't you, that this sailor had to obtain a sample of urine and he got it in a fruit jar and he wrapped it up, and you go over in the second column just opposite the material we have been reading? A. Yes.

1848

Q. And it says, "At any rate, then I get this touch of dysentery and the skipper sends me to a doctor and this tonsil mechanic, he wants I should bring him back a sample. So I buy me a nice fruit jar and go back to the ship to follow the doctor's orders. Before I go ashore again, I come into possession of some keys, these keys happen to enable me to become the proud and happy owner of six quarts of whisky. So that kept me busy for a while. I finally went ashore with my little fruit jar under my arm, all wrapped in paper, as tidy and neat as a pin."

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"But I didn't go straight to the doctor. I stopped off at a bar or two—and then I visited an establishment where unfortunately a thief stole half of my clothes. So, in turn, I stole a curtain and wrapped it around myself in a becoming fashion and hurried off to the best hotel in the town.

1849

"I had grown a beard and I fancy I made quite a picture. I went into the bar of this hotel, which was all filled with captains and colonels and gentlemen in twin-screw jackets, and I set my fruit jar on a table and sat down and ordered some gin and bitters.

"Everybody was looking at me and I heard one fancy gosooney say to another 'I say! Doesn't he look like Lawrence of Arabia?'

1850

"The upshot of it was that after fortifying himself with a few quick ones, Showboat ordered the waiter to get the manager for him.

"What kind of a safe have you got here—a combination or a key safe?" demanded Showboat in his most autocratic manner. The manager said it was a combination.

"How many people working here know the combination?", asked Showboat. "This is a very important matter which I brought here from the States. Will you keep it in the safe for me and I'll call for it in the morning," and he handed over the wrapped fruit jar.

1851

"Then I asked for a suite of rooms and a native boy to fan me to keep the insects away, and a bottle of whisky. The next day I went to a tailor and got me a pair of pants and a pith helmet—and then I went back to the ship. We sailed that day . . . I wonder how long that manager will keep my package in the safe for me."

Doctor, you say you were interested in this article? A.
Yes.

Clements C. Fry—for Respondent—Cross.

1852

Q. You were interested in this article and you read it twice? A. Yes.

Q. How did you characterize it, what type of story? A. It is the description of the life of one particular individual, a sailor, and the way he is living, and perhaps how he is going against what you and I might feel are the mores of society, how he is bucking them and what type of trouble he is getting into.

1853

Q. Do you think this article, or story, whatever it may be called, represents the ordinary average American merchant marine sailor? A. I don't know enough about it. That is why I was interested in the article. It is one individual telling the story.

Q. Of course this "Unsinkable Sailor" title intimates or indicates that this is a modern merchant marine sailor, doesn't it? A. I don't know.

Q. Subjected to torpedoings? A. Yes.

Q. The kind of men who are getting the goods to our boys in foreign countries and Africa and the South Pacific, and elsewhere, who are risking their lives every day? A. This is one type of fellow who is doing it. There are other people who are pretty good—

1854

Q. Regarding this article in the light of what we know about the character and the decency of the men who are actually filling the jobs, the very necessary jobs in our merchant marine, would you think this is a dirty, very objectionable article from start to finish? A. No, I don't think so.

Q. You don't think it is well in time of war to discourage decent young men who contemplate going into the American Merchant Marine, to help out in our war effort, by putting out a story of this sort, do you, Doctor? A. A great many of our boys are having a tough time, boys coming from

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certain types of homes and going into the Army and Navy, and meeting with this kind of thing, and they object to it and they find it rather difficult. They suddenly find that all kinds of words are used like "pass the fucking bread," and everything else, and they are used in the Army and Navy all the time.

1855

A lot of the youngsters are having a hard time adjusting to that. That is a fact.

Q. And you think this type of thing is not calculated to discourage young men joining the Merchant Marine?

A. I don't think so, no.

Q. You would say it is a fact that our Merchant Marine has multiplied many times since we got into this war? A. Oh, yes.

1856

Q. That the ordinary old type of sailor which this represents is spread pretty thin now throughout the Merchant Marine, if he is there at all? A. I happen to know a lot of queer individuals are going into the Merchant Marine, because of certain feelings about it. All kinds of youngsters are going into it and in any selection of a group of people you are going to get a cross section of civilization.

You are going to get nice youngsters and crooks and sex perverts.

Q. That is true. And that applies to the Army. You had some pretty tough characters in the regular army before the selective service was put into effect? A. Yes, and some of them were very good soldiers as long as they are in action.

1857

Q. Do you think an article of this sort as applied to the regular professional year in and year out soldier would encourage enlistments? A. Of course, we don't have enlistments in the Army now—

Q. —but would give the young draftee a feeling of confidence in the Army he is going into? A. I don't know. It

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1858

might show him what he is going to be up against before he gets into it, and it might be good for him to know what he is going to be up against. I have seen instances of people put into the Navy and they have been bothered by being put in with people who curse and so forth.

I know one fellow, 32 years old, who was so bothered he was put in the psychiatric ward in the Navy.

1859

Q. It is a fact the Maritime Commission does and has for some time maintained a school for young fellows who go into the Merchant Marine and they have carried on a campaign over the radio and in the public press and elsewhere to attempt to encourage young men to go into that service, is it not? A. Yes.

Q. You realize, as well as I do, that that service is absolutely essential to our winning this war? A. It is.

Q. With those considerations in mind, Doctor, don't you think this is a dirty article? A. No. For instance, I would like to see a story of various individuals who are in that group.

1860

While I was sitting in Mr. O'Brien's office the other day I copied out a little story of a Princeton graduate who is writing on his experiences. This is a Junior Naval Reserve Officer and Military Command by Skinner of the U. S. Naval Institute proceedings, and it gives an idea of what his views are and what he thinks about it as contrasted to the regular Annapolis man.

I am interested in that as in this. I would like to see an article by a college boy, a mountain youngster who goes into the Merchant Marine and his reactions. I would like to see some of these tough eggs who go in and how they come out. I would like to get samplings of these individuals and see how people live and what they are up against.

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Q. The article you refer to, isn't comparable to the language and so forth here? A. Not the language. It gives a description according to that man's background.

Q. Does that article depict the American Merchant Marine sailor of today like a character such as this Unsinkable Sailor? A. No.

Q. Going ahead with this record, at the bottom of page 95 it states:

"There is a new secretary in the union hall who isn't used to sailors or their language." Note that first sentence.

"It seems Showboat went up to her when she was alone in her office, bent over her shoulder—loop-legged drunk—and rasped, in his peculiarly hoarse and penetrating voice, 'How's chances to lower the boom on you, sister?' The girl jumped up in terror and ran screaming from the room. 'Oh, that man!' That man!', she cried. 'Help', she cried, 'he wants to do something terrible to me.'

"It took quite a few people to calm her down and convince her that this is only Showboat Quinn's way of asking 'How about lending me two bucks for a cup of whiskey, lady?'

Do you still maintain there is no indecent or filthy connotation in that language? A. Not in those terms. It is describing again what that fellow's life is like, and what he is thinking about and doing, and how he is acting.

Q. Doctor, would you admit that the new secretary in the union hall, who was not used to sailors or their language, got an indecent connotation from it? A. Oh, yes.

Q. And the reader would so— A. It is according to what you mean by "indecent". She got a sex connotation in which she refers to the fact that there is a sex act.

Q. She was terrified, wasn't she? A. Very much.

Q. And she ran screaming from the room? A. That is right.

1861

1862

1863

Clements C. Fry—for Respondent—Cross.

1864

Q. And she thought this man wanted to do something terrible to her? A. Yes, that is right.

Q. And she did get an indecent connotation from that? A. I don't know whether it was indecent. She got a connotation that this man wanted to have sex relations.

Q. I see. Wouldn't that be indecent? A. I don't know. The act itself might. The desire to—I don't know whether that is indecent or not.

Q. You don't like to use the word "indecent" as applied to any of this matter, do you? A. I will if I run across it in those terms.

1865 Q. You are trying to pin me down. You want me to use it and I don't think it applies.

Q. You just don't want to be pinned down? A. You are asking my opinion and I feel that it is not indecent.

Q. Now, coming to the March issue, Doctor, page 9. We have the advertisement of Thorne Smith's three wittiest, most ribald novels. What does "ribald" mean, Doctor? A. Well, I don't know the accurate definition. I would like to see it in the dictionary.

Q. You would like to what? A. I would like to see the dictionary.

Q. You would like to see the dictionary definition? A. Yes.

1866 Q. In preparation for this case you didn't look up the meaning of that word? A. No, I did not, unfortunately; not enough to be accurate. I have my own idea about it.

Q. What is your own idea? A. As I read along I think it is somewhat of a Rabelaisian humorous type of thing that has a lot to do with man's relation with women from the standpoint of sex.

Q. Would you say that a good synonym for that word would be "smutty"? A. No.

Q. Now, Doctor, have you read the Thorne Smith books

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referred to or advertised in this article? A. I have read some of them, yes.

Q. Which ones did you read? A. I have read "Topper". I am not sure whether I read "Skin and Bones", or not. I have read some of his things—I think "The Bishop's Jaegers".

Q. That is not mentioned here. How about "The Glorious Pool"? A. I have not read that.

Q. Now, do you think "Topper" and "Skin and Bones" advertised here are tersely represented in their Rabelaisian aspects or lusty or smutty aspects by this advertisement?

A. Well, they state that it is Rabelaisian; they don't use the term "smutty".

Q. Did you find those books ribald and Rabelaisian? A. Yes, I found them rather amusing.

Q. Let's read part of the text of this advertisement. Under the heading: "America's one and only Rabelaisian humorist," in large black type with an exclamation at the end there appears this:

"Only in the pages of Anatole France, Voltaire and Rabelais himself can you match the lusty, zestful fun of Thorne Smith's novels. He is the modern master of daringly sophisticated satire. His characters are completely uninhibited in their passionate tones; and no writer of genius has ever ventured to create such thrillingly improper situations! Such skillfully humorous skating on thin ice is unequalled in recent littérature. And yet behind Thorne Smith's splendid comedy, is the deeper, keen wisdom of the classic master that he really is! He punctures hypocrisy and sham modesty. It is this that marks the difference between the 'frank' classic and the merely shocking book. Thorne Smith is as shocking as Rabelais—and as wise! As fantastic as Cervantes—and as full of truth."

"Glanée at the titles of the three sparkling Thorne Smith

1867

1868

1869

Clements C. Fry—for Respondent—Cross.

1870

novels included in this entirely new volume—the Thorne Smith 3-bagger—the successor to the Thorne Smith triplets, and the Thorne Smith 3-decker) and you'll decide you **MUST** have it for your very own. It is a big \$2.50 value (and spicily illustrated by Roese!), but we have decided to let new Guild subscribers have it without cost! Your's free if you join the Guild now."

That description, coupled with the pictures on the cover of the book shown in the advertisement and the picture of the nude in the lower right-hand corner, with the man holding up a garment in front of her—would you say that that advertisement holds out shocking reading matter to be obtained by the reader? A. I would say that is a good description of Thorne Smith's novels, the ones I have read.

Q. I see. And you wouldn't take any exception to the description from a decent point of view? A. I am not so sure that these things have so much effect upon youth as a lot of people believe they do. I don't believe they do.

I happen to know about Thorne Smith—"The Bishop's Jaegers"—I happened to get it because a youngster gave it to me and said it was funny. He said it was Rabelaisian—I don't know if he used that term, but that was his inference. I read it and thought it was Rabelaisian.

1872

Q. Was he sent to you as a psychiatrist for advice? A. No, he happened to be my own nephew.

Q. He was not a patient? A. No.

Q. Have these Thorne Smith books entered into any of your case histories of any of your patients? A. No, not that I know of.

Q. You would not necessarily know of every piece of literature or alleged literature that had? A. I do try to find out what they have been reading, not necessarily in terms of this, but, how does this fellow live, what are his habits, what does he do, and so forth.

Clements C. Fry—for Respondent—Cross.

Q. And do they always frankly and freely tell you about all of what might be called off-side reading? A. Some of them do, yes.

Q. Now, referring to page 10, second column of the "Sound and the Fury", "On putting Esky in a cap and gown", notice this purports to be the reproduction of a letter from an English teacher in a small town high school, and the parenthetical description of himself is "You probably envision a bald-headed gentleman gazing at Varga vistas of forbidden fruit, but as a matter of fact I am quite young and that's not my dilemma."

Do you think the description "Varga vistas of forbidden fruit" is a correct description of the Varga girl pictures?

A. I never looked at it that way, no.

Q. This gentleman goes ahead to say that he is tempted at times to bring a copy of Esquire into his senior literature class for certain articles therein, but that "the only way in which this could be done without disturbing small town codes of conduct, would be to somehow camouflage that bulge-eyed masher on the front of each issue and let it appear like the front of, let us say, Harpers or the Atlantic."

Do you get such a reaction about the front covers in Esquire? A. No, I don't.

Q. Or Esky? A. No.

Q. Why do you think he is pictured with such large bulge eyes? A. It is a caricature.

Q. What would you think the point of the caricature would be? What was the reason for it, if any? A. I never thought about it before.

Q. If that drawing of Esky had been referred to as "that seen-everything eyes", you wouldn't agree with that description of it? A. Well, I have never stopped to think about it before until you brought it up.

Q. Page 36, Doctor. This is the Varga girl picture of

1873

1874

1875

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1876

the March issue. What would you call her costume, Doctor?

A. Pardon me.

Q. How would you characterize her costume? As a sleeping garment or as a bathing costume or an evening costume or a night dress or just what? A. I don't know what it is, to tell you the truth.

Q. That is just a scanty costume? A. Scanty, yes.

Q. It doesn't cover very much of this young lady's figure in the picture, is that right? A. Well, it doesn't cover her thighs or arms and part of one breast. It covers a bit of her shoulder.

1877

Q. It makes quite prominent the left breast with the point and all, doesn't it? A. Somewhat.

Q. Would you say the look on this model's face is intended to be alluring? A. Alluring?

Q. Yes. A. Yes, I suppose so.

Q. Do you say this picture would not be calculated to sexually stimulate young men at Yale that you come in contact with? A. You mean sexually stimulating? Well, they might say: "There is something pretty good, boys"; they might make some remark about it. It might sexually stimulate them.

1878

Chairman Myers: This seems to be a convenient place to take a recess.

(Whereupon, a brief recess was taken.)

Chairman Myers: All right, we will resume.

By Mr. Hassell:

Q. Doctor, referring to page 49 of the March issue, the cartoon with the legend underneath: "I wonder how the Sultan knew this was my birthday". What is the reaction you got to that cartoon, Doctor? That it is a birthday present sent to one of these— A. Yes.

Q. (Continuing) :—Soldiers? A. Yes, I do.

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Q. What would a soldier do with such a birthday present, with a scantily clad slave girl in possibly North Africa—
 A. Well, the French have their own ideas. I assume that is a French soldier.

Q. You think a French soldier could make use of such a birthday present? A. I should think in some way or other.

Q. But you wouldn't derive any indecent connotation from this cartoon? A. Not necessarily. I think that a lot of this humor when it first hits you, you know it has something to do with the relationship of men and women and that in some way there is sex involved but it is usually humor that goes around throughout the country. I don't go any further than that when I see it. There it is, and I stop right there.

Q. Doctor, you wouldn't say that this portrays a mores of what you know about the French? They customarily don't have slave girls? A. No. They have girls, they tell me.

Q. I think probably, Doctor, you got the same reaction out of this that I got. Here a choice bit of femininity has been turned over to the soldier. A. That is right.

Q. That he can make use of for the time being. A. That is right.

Q. Now, page 68, we have an article by Gilbert Seldes, "The Fall of the Flattering Word". How many times did you read this article, Doctor? A. Oh, a couple of times I should say. I don't remember whether it was two or three, but I read it several times.

1879

1880

1881

Q. It wasn't very interesting to you? A. Yes, it was.

Q. It was? A. Yes.

Q. Do you agree with the sentiment expressed in the second full paragraph in the second column which reads:

"Now, it's a rare odd thing that clothes which *do* enhance the sexual attractiveness of women are sold to them for

Clements C. Fry—for Respondent—Cross.

1882

smartness—"to make you more poised", to give something called 'allure'; rarely on the justifiable ground that clothes will reveal—and-conceal so craftily that men will be driven mad with desire." "That form of copy is restricted to perfume. Given perfumes, the copy writer goes berserk. (Or maybe only becomes realistic.) Here you have all the traffic will bear in the way of suggestion—beginning with the fact that such things which suggest impropriety and running through quite a lot of suggestiveness, in a nice way, of course, but omitting feelthy pictures. Just why odors should be advertised carnally and fabrics not, I can't be sure."

1883

Do you think of that statement in this article in connection with the perfume counter cartoon which will be referred to later in Esquire? A. Do you think of that in terms of the cartoon?

Q. Yes. A. Yes. If I remember the perfume, such things as shocking and daring and alluring.

Q. Doctor, in connection with that statement did you note any other advertisement in Esquire, in the magazine Esquire? A. You mean in the same terms?

Q. Yes. A. Well, I don't know. I can't recall whether any stood out in my mind.

1884

Q. Suppose you get the June issue there and look at page 153. There we have an advertisement on the first column showing a young lady in very sheer black somewhat scanty night dress or something of that kind, described underneath: "Repeating a success! Diversion" in very large black bold-faced type.

Underneath appears: "Folly ensnared in black lace and translucence! Rhapsody for the uninhibited! Cobweb black lace above 'Au naturel' midway, sheer black rayon chiffon below. By Lady Leonora. 32 to 40 \$7.98".

Would you say that that advertisement occurring in the

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June issue is in accord with the sentiment expressed in the Seldes article of the March issue to which we are referring now? A. Not altogether, no.

1885

Q. Since that advertisement is in a man's magazine, would you think that would have any connotation? A. Not to me, because—is it a man's magazine?

Q. Yes. It says here that it is. Did you have that in mind all the time, Doctor? A. No.

Q. It says: "Esquire, the magazine for men". That is the masthead. A. I am sorry. I see many women reading it and the advertisements.

Q. But usually the clothing advertisements in this magazine are men's clothing, isn't it? A. Yes.

1886

Q. Why would you think a man reading Esquire would be interested in a gown described as that one in that June issue, Doctor? A. Well, he may want to get it for his wife. I don't know, for a gift.

Q. Would that go well with the wife, such a costume, Doctor, "Diversion"? A. It is according again to how that term is used. If it is used for diversion because of the fact that he has nothing to do at the office all day and so forth and he comes home for a little diversion.

Q. You think it is diversion in that way by coming home and dressing up their wives in some such costume? A. Oh, no, but it might be very agreeable to do such a thing. Some men I suppose would consider it that way. He might say "Now go ahead and get dressed up in it for me and let us have a little private peep show". I can't quite say that.

1887

Q. He probably wouldn't get very far if he made such a suggestion to his wife, would he? A. I don't think so.

Mr. Bromley: Mr. Hassell, you know, don't you, that that is an advertisement of one of the largest

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1888

and most respectable department stores in New York City, or hasn't that occurred to you?

Mr. Hassell: I wouldn't doubt that, counsel. I don't think that alters the situation here.

By Mr. Hassell:

Q. Now, referring to the third column of this Seldes article, the one we are referring to, beginning with the first full paragraph in that column:

"When we approach the young of the species, the innocents at college; we are a little franker. A 'show off V-neck' or a 'skirt pleated for action' (on a bicycle, so be quiet) are at least 'functional' (of course, the great surprise is to find all descriptions of clothes using the term 'fly-front'. Where I come from we didn't talk like that in front of the women folks, we certainly didn't.)"

1889

Do they talk like that in front of women folks out in Connecticut? A. Oh, I have heard youngsters all over the country—I don't know whether exactly like that, but they are a little franker in their talk—

1890

Q. They are a little franker than you ordinarily find in common polite society? A. No. I think it is according to how you define that. I have seen an awful lot of nice youngsters who make little remarks about things, not in a dirty way. They refer to things, articles of clothing and so on. The sweater girl. They might comment on their own girl and say: "You look like a sweater girl" and rub their hands and let it go at that.

Q. You think this kind of conversation or talk is common between these young fellows and their girls and their relations in their homes? A. They don't take it up as a topic of conversation and say "Let us talk about the fly-front", or something like that. I think it comes naturally in the

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thing that has passed by. No one places any emphasis on it.

Q. It doesn't make any difference whether there are women around or not? A. No. For instance, I can tell you a typical thing. A fellow had one of these zipper fly things and went to the bathroom and it caught in the zipper and the girls up there thought it was amusing. No one said very much about it. The poor fellow had to get out of the place. The girls thought it was sort of amusing. They didn't discuss it at any great length. That is the way youth is, a lot of them. There are still a lot of people who don't like these things mentioned in front of them. There is no doubt about that. There are certain girls, perfectly nice girls, not that they are too squeamish in their life, they feel they just don't like that type of thing.

1891

Q. Talking about the population as a whole, would you say there are more of these sophisticated persons than there are the other types as you just mentioned? A. They think they are sophisticated along this line, yes. I mean, they seem to express these things and accept them, if that is sophistication. They accept these things.

1892

Q. You think there are more of those than there are those who don't accept it? A. That I can't tell you. There are an awful lot of them and very nice people, very nice youngsters so far as I can see.

1893

Q. But your experience has been with the young college men at Yale, hasn't it? A. No, it has been at Princeton, Harvard, girls at Vassar, Holyoke, Smith, Radcliffe. Small Southern colleges. All over.

Q. Have you ever had any experience with girls from Wellesley? A. Yes.

Q. You would say that all of these girls and boys are more or less sophisticated with respect to matters of this sort? A. Not all of them. Again, you get your various groups, and there are certain groups. At all of these colleges you

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1894

get individuals who don't talk in these terms and don't like it. There are other groups that just seem to accept it as part of the day's journey. There are other groups who always turn to anything that is filthy. I mean they are always talking in a filthy manner or trying to turn anything they say into what you call an impure relation. They keep on sex all the time, so that I don't see how you can say all of them. You always have various groups and individuals.

1895

I can't imagine, say boys at the Dwight Hall, which happens to be a YMCA religious organization, discussing these things at their meetings, but I can tell you that every year they invite me to talk about sex and they ask all kinds of questions and they have girls there. Fellows that have brought their girls into the class, into the lecture.

Also P give a course in so-called mental hygiene at Yale. Fellows have asked me if they could bring their girls down at the time I am going to give this talk on sex. They accept it and that is all there is to it. Nobody goes out laughing or thinking it is a funny thing.

Q. Now, refer to page 107 of the March issue of Esquire. There we have a black and white full page cartoon under which appears the legend, "It seems like somebody's allers clamorin' to somebody to open up a second front, don't it?"

1896

Doctor, would you say that such a scene as this; that is, referring to the woman nursing one kid in her arms and another one bawling on the floor who wants such attention, is a common everyday scene? A. No, it is not a common everyday scene.

Q. But you say there is nothing objectionable about this at all? A. I don't think so, except that one feels a little offense at this sort of thing. Some people don't want to see pregnant women. A lot of women, when they become pregnant stay home and won't go out and show themselves.

Clementine G. Fry—for Respondent—Cross.

Q. But most women when they nurse their babies in this fashion retire? A. That is right.

1897

Q. Seclude themselves from the public gaze? A. That is right. On the other hand, you see them in parks, Italian women and what not, nursing their children right out in front of everyone.

Q. But that is not the customary thing? A. No.

Q. Now, refer to the April issue, Doctor. There we have the front cover showing, Esky in a reclining position with his bulging eyes looking up at two female figures. Would you say these female figures are drawn with over-sized or over-emphasized breasts? A. Oh, I suppose so. There are women with breasts that size. I have seen them in the National Geographic. I suppose they are over-emphasized.

1898

Q. Now, look at the Varga girl on page 38. There we have the figure of the young woman with red hair, a smile on her face, and she apparently has blue eyes, dressed in what might be termed a caricature of a private, first class, Army uniform, although around the breasts and the lower end of it it is cut in a feminine fashion. We have the verse there "Peace, It's Wonderful!" in large, bold-faced black type. And this verse reads:

"When this military Beaut
Blows a root-a-toot-a-toot

1899

As a signal that the victory is won . . .

And her soldier boy relaxes . . .

After slapping down the Axis . . .

And then leads her to the altar on the run . . .

She will let him slumber heavily

Where once he woke to reveille

And never bawl him out about his lapse;

But unless my eyes deceive me

He won't be so lax, believe me,

When the clock upon their mantel points to taps!"

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1900 Doctor, what do you say that verse refers to, "Unless my eyes deceive me, he won't be so lax, believe me, when the clock upon their mantel points to taps."? A. I suppose it refers to the fact that he is going to consummate his marriage. He brought her to the altar.

Q. You say there is no indecent connotation in that? A. Not in the consummation of marriage.

Q. In a magazine of this sort? A. No.

Q. Now, refer to page 60, the article "The Court of Lost Ladies."

Did you read this article, Doctor? A. Yes, with great interest.

1901 Q. And how many times did you read that? A. Oh, I don't recall. A couple of times, two or three times.

Q. Was it your reaction to this article that it is written to discourage men and young men from dealing with lewd women, street women? A. Well, I don't know whether it was written with that in mind, but it certainly gives a picture of the lives of these individuals, what they are like, what they are up against, what type of individual practices the trade. That is about what I got out of it.

Q. The identity of the court is not fixed in this article, is it? A. No.

Q. Save and except that the judge is a woman? A. Yes.

Q. The place of the holding of the court, the city, is not shown? A. No, not that I remember.

Q. No one of the participants or characters in this article is definitely identified? A. No.

Q. Now, starting in the first column, page 60, the second paragraph:

"A younger street walker, pert and shapely in a suit of bright green, sneers in disdain and tries to move away. She

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cannot because the bench is crowded. So are all six of the prisoners' benches crowded by the sisterhood of the streets, the sisterhood of starvation and syphilis. They have all been 'on the turf' pursuing soldiers on leave and men without women. They have been making shrewd bargains for the sale and resale of imitation of love. Young and old, white and black and yellow, they now attend the opening of court. The young ones sit upright in fear or in bright boldness. The oldtimers whisper to one another and send signals by eye to friends among the spectators. Always the women shift and stir in their places. A heady stream of trade perfumes creeps through the great gloomy court. Coldly the women stare at the policemen who dragged them in at midnight and must soon reel off their cell-door tales. The women wrinkle their foreheads in unaccustomed thought and make ready old, useless lies, old, useless appeals for freedom. 'I'm a good girl, Your Honor. I never did this before.'

1903

And over in the third column the first sentence beginning underneath the picture:

"The arresting officer tells his story in a dismal rote: A glance and a whisper on a certain street and the quick sales talk. 'She put the price at three dollars and I then placed her under arrest. Yes, I've seen her before.'

1904

"His story, bare and precise, leaves her no room to operate. There's no weak point to debate while she does her slow thinking. She can only deny his charge. And she does. 'Well, I was only fooling, Your Honor, so help me God. I thought he was a friend of mine. The way he looked at me.'

1905

"Laughter, soured with sneers, jiggles up and down the benches and makes a fool of her. She scowls over her trim shoulder. Then, made reckless by anger, she raises her hip into an impudent strut. Her face, cleared of rouge

Clements C. Fry—for Respondent—Cross.

1906

and powder for her trial, takes on a sullen look. Thus she gives up, wordlessly reveals her lie.

"Her Honor gives the girl in green a chance to plead for leniency. She asks in a dispassionate tone: 'Is there anything you have to say before you are sentenced?'"

And so forth. Then, going over to the matter at the bottom of column four of that page:

¶ "A sad-voiced policeman, well over middle age, puts on his glasses and slowly reads his testimony. He had been sitting in his car on such and such a street. Along comes the defendant, no doubt a charming picture on her high red heels, her Kaffir eyes gleaming in the night. In good humor, almost gaiety, she had smiled and, for a modest consideration in cash, had placed her person, lithe and yellow, entirely at his disposal. She had, moreover, recommended herself highly, saying that her imitation of love was mighty near the real thing."

"He reads precisely, 'She thereupon asked me again if I would like a good time. Following my orders, I replied: 'Yes, I would.' She thereupon invited me to her room. I asked her after we got there if this was the place where we were going to have the good time. She said: 'Yes, Darling.' She then pulled off her dress and otherwise divested herself. I asked her if I ought to pay her first, and she said: 'All right.' I paid her with three marked one dollar bills which are in evidence. She lay down. I then placed her under arrest.'

1908

"She stands mute when Her Honor speaks. It is plain she expected another play, a guiding hand. She looks wildly backward, searches the ranks of spectators, stirred by her beauty and her fear. Their inscrutable faces, hard with thoughts beyond saying, stare at her body. Someone there must know her."

Clements C. Fry—for Respondent—Cross:

This picture character that has the Kaffir eyes, apparently a mulatto, Doctor, would you say she is pictured as the most alluring of the individuals in this article? A. In what?

1909

Q. In what I have read. A. No, she is not pictured as the most alluring. I don't think any of them are alluring.

Q. She is described as a person that is lithe, yellow and entirely at his disposal? A. Oh—

Q. She is also described as making no doubt a charming picture on her high, red heels, her Kaffir eyes gleaming in the night. You wouldn't say that she is given any complimentary description? A. Oh, yes, I suppose that is complimentary in that particular setting, yes.

1910

Q. Now, continuing with this article, in the third column near the bottom, just past midway, page 61, immediately opposite the picture of the stern-faced matron holding a girl by the arm.

"And now there comes a blonde woman, young in years, not otherwise. Under lush mascara her eyes sent out plentiful looks of hate. She would be the last to deny that she is an old hand at the old game. Yet she is sure of one thing: Her name doesn't appear twice on the probation card. Nobody ever caught up with her before. And she is not caught yet. Not guilty as she sends her answer roughly over the rail. Her loud response hushes the women behind her, hushes the spectators who are at present bored and are chatting among themselves.

1911

"The arresting officer tells his story. 'And so I put three dollars in marked bills on the table and when I came near her she let her dress fall. I then placed her under arrest.' He steps down.

"The prisoner makes no bones about showing that someone had coached her. Quickly she begins to destroy his

Clements G. Fry—for Respondent—Cross.

1912

testimony. She remembers all that he said, recalls it so exactly that one might suppose the trial had been rehearsed. 'Yes, I was in a dressing gown. I never said a word to him and it's not against the law to wear a dressing gown; even if you wear it on the street.'

"Her Honor sees that the prisoner is a little smarter than the others. At least she can remember a sentence from one minute to the next. She says: 'You testify that you were visiting at the apartment when the police came in?'

"'Yes.'

"'Had you been there many times before?'

"'Yes. What about it? Is that wrong?'

"'No. I didn't say it was. Now, tell me again, please: what you did when the officer came into your room. Weren't you surprised?'

"'No. Why should I be? He wasn't in uniform. And there were three or four men in the house. I told him "Hello."

"'Did the officer say anything when he put the money on the table? Take your time before answering. He didn't testify that he said anything.'

"'No, he didn't say a word. I didn't even see the money until after he arrested me.'

"'The officer has testified that you took off your dressing gown in his presence, is that true?'

"'No, it isn't true. And that isn't what he said. He said I let it fall.'

"'Tell me what happened.'

"'He put his arm around me and the gown fell off my shoulder. Then he let it fall and he held my arm and laughed.'

"'You deny, then, that you were doing anything improper when the officer came into the apartment?'

1913

Clements C. Fry—for Respondent—Cross.

"I do."

1915

"Case dismissed."

Doctor, would you say that this article, considering that it appears in a magazine for men, such as Esquire, such a magazine as contains month after month the type of material we have been calling attention to here, does not go into too great detail in describing these scenes and incidents it purports to describe? A. Yes, I would say that it is all right to appear here.

Q. You would say what? A. That it is all right to appear here. I don't think it is out of its setting. After all, it is depicting a trend or social situation that we have never faced very frankly. We have never done very much about it except in terms of law. We have not studied it, we have not tried to get at the real thing, what is behind it and so on, and how to control it.

Q. You won't say it goes into too great detail to accomplish the result? A. I don't believe so. It shows that the whole question of starvation, the whole question of syphilis and the rather sordid life or lives of the various individuals, and what they were up against from the sociological standpoint.

Q. Do you regard Esquire as an uplifting crusading magazine for the eradication of prostitution? A. I don't think that is their purpose, so far as I know.

Q. This is the only article of this type—? A. I don't think this will eradicate prostitution. I don't think it will.

Q. This is the only type of article, or only article of this sort that appears in any of these eleven issues, is it not? A. Of this type, yes, as I recall.

Q. So, in view of the character of this magazine, and the fact that the Varga girls have been described not as art, but as entertainment, the cartoons as entertainment, and

1916

1917

Clements C. Fry—for Respondent—Cross.

1918

possibly other features as entertainment, would you say this is put in here for entertainment of the male purchasers and subscribers to this magazine? A. No. I say, to me, it is more of an informative type of article.

Q. But, Doctor, isn't it a fact that you are more interested than the average individual in matters of this kind? A. Yes, I presume so.

Q. And you would not be surprised if Dr. Tillotson had testified, or by his testimony had indicated, that he was more interested in this type of article than the average individual? A. No.

1919

Q. In other words, it is to be expected that a man in your business would be a great deal more interested in this sort of thing than the average reader of Esquire? A. I think a lot of youths would be interested in this.

Q. Will you answer my question, Doctor? A. Will you state it again?

Mr. Hassell: Will you read the question, please?

(Question read.)

A. I would assume so.

Q. Now, Doctor, let's come to the May issue of Esquire, at page 32. This is the article "The Savage Beast in Us," with the sub-title "Dispelling the hopes of burlesque entrepreneurs and fears of censors that the strip has sensory appeal."

How many times did you read this article, Doctor? A. I think two.

Q. Did you have a professional interest in this article also? A. My interest isn't purely professional. It is according to how you define that, again.

Clements C. Fry—for Respondent—Cross.

Professionally I am interested in these articles in terms of what youth will get out of them, will it do them any good, will it be of interest to them, will it show them a side of life that perhaps they should know about.

1921

It seems to me it should not be sprung on them all of a sudden.

Q. You say you are interested in the articles with a view to determining whether youth will get any good out of them? A. Whether they will see the world as it is and not just wear blinders.

Q. On reading this article twice, did you gain the impression that the effect of the article would be to discourage you in attending burlesque shows? A. Not necessarily, no. I didn't get that feeling, no. I didn't think it would drive them to them, either.

1922

Q. Now, to a youth who had never attended a burlesque show, do you think this article would have been informative as to what goes on in those places? A. Yes, I think so.

Q. Would you think that in spots this article would sharpen his interest in having a visual demonstration of what goes on at those places? A. Oh, yes.

Q. Now, the Varga girl at page 37 and 38. A. Yes.

Q. Doctor, here we have a two page sized Varga girl drawn in life-like colors. This subject has red hair that is apparently falling out of bounds, a rather informal appearance, wouldn't you say—her hair? A. Yes.

1923

Q. Would you call that a smile that she has on her face, appearing through her fingers? A. Yes, a smile.

Q. Rather provocative? A. Provocative?

Q. Enticing maybe is a better word. A. How far do you go with that word? She's rather a nice looking girl with a nice smile.

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1924

Q. Would you say alluring, Doctor? A. Yes.

Q. That costume, Doctor—would you say that is a bathing costume or what would that be? Note the brassiere part of the costume, if it may be referred to as such, doesn't have any halter going around her neck or over her shoulders? A. Well, apparently some way they know how to keep those things up. I saw a picture in the Post yesterday of the pin-up girls in the same sort of thing.

Q. You would judge that from the slightly leaning posture of the upper part of the body there, that there might be some glue or something under there holding them to the breasts? A. It is not falling off.

1925 Q. You wouldn't say that is a bathing costume, would you, Doctor? A. I don't know.

Q. And have you ever seen a costume cut like that, that the ladies wear—I don't think they call them chemise any more—they call them combinations or something, whatever they wear close to their bodies.

Have you ever seen anything cut in that shape? A. I can't remember.

Q. Have you ever seen anything like that without shoulder straps? A. I can't remember.

1926 Q. Doctor, wouldn't you agree that this figure is more or less a figment of the imagination of the artist who drew it and not related to anything that is actually worn by the feminine sex? A. Oh, course, the artist has the privilege of using his imagination.

Q. Maybe so, but we are not discussing that. A. I don't know. I am not too familiar with women's bathing suits. I have glanced at them. I don't remember if I have ever seen anything like this. There may be some on the beaches—I don't know.

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Q. You have never seen one as revealing as that? A. I have seen them like this, just a little strap over the shoulder, just about the same.

Q. But here we don't have a strap over the shoulder? A. No.

Q. And if she went on the beach with that thing on the men in sight would look and watch to see the thing fall off? A. Oh, I imagine they have a lot of other things to do.

Q. You mean a young woman shaped like this one with this red hair and blue eyes and enticing smile, wouldn't create a disturbance if she went on the beach? A. I can remember in Asbury Park when I was a youngster, a crowd following the first woman to take off her stockings with a bathing suit.

Q. And that might happen here with this party? A. I can't say that.

Q. If she went on the beach with that costume? A. I think there would be a lot of things that it would depend upon. One is her attitude as she walks along the beach. Is she trying to attract attention or what not?

Q. We have here her attitude of a coy person peering through her fingers, the enticing smile, we have that here, don't we? A. That doesn't mean very much to me.

Q. Not coupled with this extremely scanty costume? A. No.

Q. Would you call those over-sized breasts, Doctor? A. Not necessarily. Some women have them that large.

Q. They are quite large, aren't they? A. They are not necessarily over-sized. Some women have hardly any breasts, flat-breasted girls. Some individuals like them that way.

Q. This young woman really has quite large breasts? A. Oh, yes.

Q. Would you say there is no indecent suggestion or

1927

1928

1929

Clements C. Fry—for Respondent—Cross.

1930 suggestive connotation to be derived from this picture in a magazine such as Esquire? A. No.

Q. Now, referring to page 48. Here we have one of the air raid warden, or maybe this is an airplane spotter. In the other picture you recall the air raid wardens were on top of a building looking through the studio skylight? A. Yes.

Q. You could tell by the insignia on the arm that they were air raid wardens, do you recall that? A. Yes, I think so.

Q. This one you can't; you can't see what that symbol is. A. Well, they have a sort of symbol, I don't know what it is.

Q. You can't see the color of the symbol on this one? A.

1931 No.

Q. Would you say that he is looking down, the man looking through the binoculars? A. Yes.

Q. And that he is looking down into a congested section of the city? A. I wouldn't say for sure.

Q. Buildings all around, as near as you can tell, or as can be shown? A. Yes.

Q. And it is night time? A. Yes.

Q. And apparently there is an air field in the far distance, to the left top of the picture? A. Yes.

Q. With searchlights coming from it? A. Yes.

1932 Q. So, with those things in mind, would you say the legend underneath, "She looks more like a B-17 than a P-40," would refer to the size of a woman being looked at by the man with the binoculars through a lighted window in a building which is not shown in the picture? A. Either a lighted window or it may be just a shadow, it may be a silhouette.

Q. But you would get the idea that this man is seeing something? A. Yes.

Q. That attracted his attention? A. Yes.

Q. Would you derive any sexual connotation from that?

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Is there any sexual connection? A. I wish you would use sexual in a little different way. If it is in terms of yes, he is looking at a woman, he is making some reference apparently to a shadow, a form, and comparing it to airplanes. Now, that goes back to the fact that maybe she is fat and doesn't appeal to him and the other one is that she is slim. I don't know what B-17 looks like.

Q. And whether she is clothed or unclothed, you wouldn't draw any— A. Not from that caption there, no.

Q. Do you think there would be any interest to the readers of Esquire by devoting a full page and some color here to a cartoon of this sort simply to look at a woman fully clothed? A. I didn't say fully clothed, did I?

Q. Well, however you want to describe her, to make her apparently respectable. A. I don't know. It only refers here, to my mind, to her body form in terms of size. Maybe in terms of trimness, I don't know.

Q. You didn't get any picture of nudity from that? A. No, I honestly did not.

Q. Now let us refer to pages 86 and 87. Now here we have a strip of cartoons with the legend underneath, across these pages, from 86 across 87, "The Exploits of Esky." A. Yes, sir.

Q. And would you understand Esky to typify the publication Esquire? Is that sort of a symbol? A. I don't know.

Q. You never heard that that was the fact? A. No.

Q. That that was the intent? A. No. Except he is the same figure on the front?

Q. Yes, the same as drawn on the front and referred to in "The Sound and Fury" column and so forth. I believe you said that you would not describe him due to the bulge eyes. I believe described by Dr. Tillotson, as all-seeing, or some-

1933

1934

1935

Clements C. Fry—for Respondent—Cross.

1936

thing of that sort, or maybe it was Mr. Smith. You wouldn't get any off-color sexual connotation from this figure of Esky as he appears? A. No.

Q. In this magazine. A. No, I wouldn't.

Q. By reason of his bulging eyes? A. By reason of his bulging eyes, no, I wouldn't.

Q. Now, Doctor, let us read the text, beginning at the bottom so we can have the full sentence, in cartoon 28, the last line:

"The lady dislikes men but wants a baby, so I sold her a ticket for the time when women can become pregnant by taking an electric shock. What do you want?

1937

"I want to see the red headed dancer.

"You won't need a ticket for that, just go upstairs and down the path.

"Down the path was a brook and Esky saw the red headed dancer in swimming.

"Hooray, he shouted, at last a pretty girl to look at.

"Esky, you darling, won't you join me?"

Now that refers to the cartoon apparently just above this language? A. Yes.

Q. Showing Esky peeping from behind the bush at a girl in the nude, in bathing, and she asks if he won't join her.

1938

Do you see any indecent sexual connotation in that language and the picture? A. Not necessarily indecent. It is the usual Rabelaisian thing, again going back to the Thorne Smith type of thing, I would assume.

Q. But you say there wouldn't be anything indecent in a man such as Esky peeping from behind a bush at a young lady nude in swimming and then being invited to come in and join her? Is that the common accepted practice? A. No.

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- Q. In the mores of today? A. No, I don't think it is.
 Q. It not being such, would you say there is anything indecent in connection with it? A. I don't think it is indecent, no. I think it is indecent and I think—

Q. You don't like the word "indecent". Would you supply some other word? A. I think it is rather indecent and it is one that has Rabelaisian humor.

Q. Yes. A. And if you take, again—you pick these things out all the time and put them in one little setting.

Q. All right, we will go right through this thing in the cartoon:

"But before he could, a Western-Postal girl tapped him on the shoulder. Follow me. You are to be judge of beauty in Finneagan's Dell." Esky followed and so did the red head, dressing as she walked."

She was apparently in the nude when she invited him to join her in the pool and without shame entirely she walks along with him as she dresses, is that right? A. Yes.

Q. Continuing: "The Western-Postal girl started to sing singing telegrams.

"Happy birthday, Auntie Bess, every time I like you less."

"But Esky wasn't listening. To one side of the path Esky saw the most perfect creatures disporting themselves in a corot-like clearing."

"The Red Head explained. That is the abode of the Libidos. Where they gather when they are not on men's minds."

What does libido mean? A. Libido?

Q. Yes. A. It is a Freudian term used in a very broad sense in terms of sex. It has not a narrow sex connotation at all. It does not refer to intercourse, it does not refer to sex

1939

1940

1941

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1942

feelings. It takes in the whole love-life of the individual in a very broad sense and it takes in the question of the inner drive of a man from the sex angle, and it is broader than the lay people think it is. That is the way we use the term.

In other words, it has to do with the whole love-life in relation of man and his total drive and going into the question of taking into account the whole matter of birth, the drive for children, and so forth; the pleasure of sex, the fulfillment of the whole thing and the love-life itself.

*Q. That is the technical meaning? A. That is right.

Q. The Freudian definition? A. That is right.

1943

Q. But you say that is not the usual accepted lay definition? A. The lay individual has misunderstood Freud a great deal, yes. They always feel that psycho-analysis, for instance, means sex.

Q. What would you say would be the common lay acceptance? What definition would be accepted? A. Well, I think the lay definition uses that. He is not familiar with the Freudian thing.

Q. He uses it as referring to sex gratification, doesn't he?

A. Sex, it may perhaps be gratification. It may be stimulation and so forth. You see, after all a lot of people in terms of this sex, Americans, a great many of them don't go very far with sex in their libidinal drive. If you want to call it that it is just a Freudian type of thing. That is, they get a libidinal kick and that is all, nothing happens, because they feel they can't go any further than that.

Q. Would you say that is descriptive of the average ordinary individual? A. No, but I would say a lot of people.

Q. A lot? A. Yes.

Q. Would you say those individuals are sub-normal or abnormal? A. No, they are people whose mores have been

1944

Clements C. Fry—for Respondent—Cross.

built up. Their cultural background has been built up in such a way that they find that they cannot allow themselves to get any kind of kick out of sex. Sex to them is not connected with the thing. For instance, you know in certain homes that great emphasis is laid on purity and the importance of it and perhaps it is over-emphasized in one sense of the word. Now, those individuals are not abnormal; it is their culture in giving them this viewpoint.

1945

Q. The upbringing and environment has a lot to do with the individual's outlook and his accepting or not accepting these matters, does it not? A. Oh, I would say so, yes.

Q. Now, are you able to divide the population between such individuals as you refer to and others who do such things of this sort? A. As to whether they are nice people or not?

1946

Q. No. I say, would you say fifty per cent of the population is as you describe them and the other not, or couldn't you give a figure? A. I couldn't give a figure, no.

Q. Now, we go ahead after libidos in 30. The cartoon or drawing over the matters as read under 30. It shows Esky with two girls, one of them has a cap on. She is apparently the Western Postal girl, but Esky has his back partly to them and is peeping around a bush, which seems to be a favorite pose of his, at some absolute nudes on the other side of the bush. You noted that, didn't you? Probably that is Finneagan's Dell.

1947

Then we go ahead with the text under 31:

"Where they gather when they are not on men's minds."

"Esky watched them play gracefully or loll indolently by a tinkling fountain."

You see the tinkling fountain here, Doctor? A. Yes.

Q. Can you see that? A. Yes.

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1948

- Q. There is some white water shooting up in that cartoon
 31. Whether it is a fountain or not, I don't know. Do you think that is a fountain? A. Yes, I do.

Q. By the black-haired girl? A. Yes.

Q. No water shows underneath. Let us go ahead:

"The sound of their mellow voices lured Esky towards them like a magnet, but the Red Head grabbed and held him. The libidos joined in a ballet while leaves rustled an accompaniment. 'Why do so many look like movie stars?', asked Esky.

"Oh, they belong to men who are too lazy to imagine their own perfect woman so they adopt the likeness of a star and if you'll look close you'll see one old hag—the libido of a man who just don't give a damn."

And in cartoon 31 Esky is looking over a bush or something which you would think is the old hag because she has a sharp nose. She has a rather prominent breast, though, doesn't she, Doctor? A. Yes.

Q. Continuing with the reading: "Esky saw a mess drift by. 'Come', said the Red Head, 'if you don't get to Finnegans Dell in time I'll be attending Esky's wake.' And the three of them hurried to the amphitheater.

"The Western Postal girl explained 'This contest is the result of an argument between Hollywood big shots as to which studio has the star with the best shape. Each has its queen garbed in a bathing suit and all you do is pick the prettiest.'" and so forth.

Doctor, would you say that these cartoons with the matter underneath which I have read are entirely proper and decent? A. I think so. I think they are depicting what men's attitudes and ideas are towards women. What he thinks he wants, a well-formed individual with plenty of sex drive

1949

1950

Clements C. Fry—for Respondent—Cross.

and so forth and an individual that has some get-up and go about her in comparison with this scrawny-like individual in the other picture.

Q. Doctor, what do you think of the practice, if such it may be called, of a man peeping over bushes at a woman in the nude in bathing? Do you think that is indecent? A. It is not a common thing; it is not looked upon as the proper thing to do. It may be abnormal. For instance, I spoke to you about sex peepers. There are a lot of individuals who do a lot of peeping and so on and get quite a kick out of looking.

Q. So Esky may be an abnormal character, Doctor? A. No, I say that that is what happened.

Q. In the other picture where he is peeping around a bush at a bevy of six or more entirely nude women dancing or disporting themselves. You would say that is entirely a decent and proper thing and that is entirely decent and the proper sentiment to depict and describe in a magazine of this sort? A. It is according to what the total article is trying to convey. The idea that I got out of this was apparently they are trying to convey in one sense of the word what the libido is and what man's libido is, what he likes from the sex standpoint. He likes these well-built girls. We have the Follies girls, we have the burlesque, we have this sort of thing all through life where we are showing the women with a good figure and what not, a semi-nude and so forth. Perhaps that is what they are doing. These are the ideas man has on his mind. He doesn't like this type of thing.

Q. Now, if Esky is a symbol of the Esquire magazine and this strip truthfully depicts his exploits as it purports to do, would you get any different notion from what you had before as to the risqué character of Esquire? A. Would you state that a little differently?

1951

1952

1953

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1954

Q. Do you want the question read, Doctor? A. I would like to have it read.

Mr. Hassell: Read the question, Mr. Reporter.

(Question read.)

The Witness: No, I don't believe so. Again, if what I see is correct, and this is my interpretation of the particular strip, I am trying to get out of the strip why are they using the term "libido" and so forth? What is the meaning?

1955

By Mr. Hassell:

Q. In other words, Doctor, you have applied your professional view to an analysis— A. That is right.

Q. Your professional ability to an analysis of it. A. That is right.

Q. That is the way it strikes you? A. That is right.

Q. Now, page 93, the last item we have in this May issue, the color photograph on page 92, and the descriptive matter boxed in at the lower left-hand corner of page 93: "Broadway for the Boys. The juke joint scene from 'The Eve of St. Mark'". And this descriptive matter under that:

"These soldiers have just come from a discussion of a hygiene lecture in which it was estimated that in the Army 20 per cent don't, 20 per cent do and 60 per cent might. They are Quizz West (played by William Prince) and Francis Marion (James Monks) and they have already made considerable progress with the Bird sisters, Lill (Joan Dolan) and Sal (Toni Favor) perched on Quizz's lap."

"Lill tells how dull it was in town before the Army moved in but hints that there can be too much of a good thing. 'This is practically inflation, what we've got now', she

1956

Clements C. Fry—~~for~~ Respondent—Cross.

complains.

"One thing leads to another, and another leads straight back to barracks when Quizz decides he belongs to the first 20 per cent. 'I have a hell of a hankering' says Marion. 'But you're the strong, solid man and you bear the purse, I bow to your judgment and follow'".

Now, Doctor, the picture of the girl seated in the man's lap, each of them holding a glass, in the girl's glass there can be seen the remains of a drink of some sort. Note in the description which I have read, these soldiers have just come from a discussion of a hygiene lecture in which it was estimated that in the Army 20 per cent don't, 20 per cent do, and 60 per cent might. Do you say, Doctor, that this picture and the descriptive matter connected with it doesn't refer to the sex and the sex relations between the girls shown in the picture and these men? A Oh, I wouldn't say it does refer to sex, no I wouldn't say that.

Q. Would you say that it does refer to illicit sex relationship? A. According to this, 20 per cent—I mean this chap says "I belong to the first 20 per cent", doesn't it? That is, the one that doesn't.

Q. Well, what does that discussion mean? A. Well, I should think that 20 per cent of the boys in the Army don't, 20 per cent do and 60 per cent might.

Q. 20 per cent don't, don't do what? A. Don't have intercourse, extra-curricular activities.

Q. Don't have illicit intercourse? A. Outside of the marital phase.

Q. The not permissible? A. That is right.

Q. And 20 per cent do and 60 per cent, what is the other? A. 20 per cent do.

Q. 60 per cent might? A. 60 per cent might.

1957

1958

1959

Clements C. Fry—for Respondent—Cross.

1960

Q. Now, the descriptive matter connected with the picture. Would you say there is any indecent connotation to be derived from this? A. I wouldn't say it is indecent. I would say it is again a given fact, according to this thing, when they are stating that 20 per cent of those boys do, 20 per cent don't and 60 per cent might.

Q. Now, you think it is an entirely decent matter to divide the armed forces of the United States into such a percentage as this? A. Yes, it is—

1961

Q. And make it the subject of conversation in a magazine of this sort? A. If it is a scientific fact, I don't know whether it is a scientific fact or not, but if it is just a general opinion of the boys, that this is a general opinion of the boys that they are talking about, I don't see why it can't be in this magazine.

Q. Aside from its truthfulness or falsity, Doctor, do you think it is a decent subject of conversation? A. Yes, I do. I don't think sex is indecent by any means.

Q. Now, we are talking about something more than sex. Doctor; we are talking about illicit sex relations. A. I see.

Q. And dividing the Army into these percentages. A. That is right.

1962

Q. And you know also that this imputes to 60 per cent, which is considerably over half— A. Yes.

Q. (Continuing) : —of the boys whom we owe so much, the fact that they would have illicit sexual relations if they had the opportunity. A. Not necessarily if they had the opportunity. There again there are a lot of factors that come into this situation as far as they are concerned. After all, man is driving in the sense of the sex standpoint towards woman; woman is driving towards man from the standpoint of their sex life. Society says that man and woman in order

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to consummate any sex act ought to be married. We know that in the growth of this thing as they move towards that so-called ideal which I think is a good physiological ideal, that people go through various phases of their lives.

For instance, we know as physicians that youngsters, very young, have a curiosity about sex, and get into all kinds of little difficulties in terms of their sex lives. Children, that happens to be a given fact. As they come up towards puberty and their glands begin to work and so on, again they have this sex drive to meet. It is said that most boys towards puberty masturbate. That is the way they answer that urge. I am not sure that they all do. I have seen quite a few boys and they seem to be perfectly honest, and they apparently haven't gone through that stage, but they have had to fight with it.

Then, as you come up and pass through puberty they are trying to establish some attitude towards it. Should they or shouldn't they? What should their attitude be? And as they come up towards 18 and so on, they do a little kissing, some of them, some of them do have intercourse. Some of them with bad results to their whole make-up and others get by with it. Then you come to a stage in their life when they do a lot of what we call heavy petting. There is a lot of heavy petting. I don't know the percentage, but there are certain groups of people, as I put it, they prefer not to have intercourse, they prefer not to masturbate, so they move towards this heavy petting and do a certain amount of stimulation of themselves by this and stop at that point.

A lot of those youngsters are boys, of course, who are actually afraid to do anything else, and it might be a very good thing if they are afraid to carry on further than that. It is a saving grace for them, apparently.

1963

1964

1965

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1966

Then, the next step, of course, is the intercourse, and according to society, the only time you are supposed to have intercourse is when you are married, and you are performing an act for a purpose, and society condones it, but we know we have variations, we know we have all these sex things going on. We know that the boys are up against this scrap of how they are going to orient themselves and get a good attitude towards their sex life.

1967

What are they going to do about it? How are they going to act? Now, in my experience, putting it on the side of all these things, of saying it is indecent and so on, puts it into the boy's mind that factor about sex and that he is going about it in an indecent way or that it is an indecent thing. He gets ashamed of it and is bothered about it, and it seems to me when you present him with the biological facts, the sociological, the psychological facts of what he is up against, he goes along and establishes his sex life in a much better manner than he will be able to do with a lot of emphasis placed upon the fact that all his thoughts are sexual thoughts. That is why I can't use the term "indecent" that you want to have me use. It is because of that attitude that I have expressed to these fellows. Surely we meet with a lot of tragedy in these kids, but I don't think these pictures or these stories or anything in this case stimulates them to the impure act itself at all.

1968

Q. You think, Doctor, speaking of the population of the United States as a whole that it is an accepted thing in the mores of today to discuss a thing of this sort, divide the Army of the United States into these or any percentages with respect to whether or not they have illicit relations and make that a subject or topic of conversation. A. Not all over

Q. Say at our tables, at our firesides, with our friends in

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church or out of church or at the movies or wherever we may happen to be? A. Oh, no; we haven't got that far in our civilization. It is too bad, but we haven't.

1969

Mr. Bromley: This play is touring the country and has been or will come to Washington and has never been banned anywhere, and it is one of the great plays now on the stage. It is just a report of what happens on the stage, what the actors say on the stage.

Before we adjourn, Mr. Chairman, I would like to make a statement along the line of what I understood to be my friend's comment this morning.

1970

I have another psychiatrist, Doctor Richard Hoffman, very well-known and prominent psychiatrist of the city of New York.

I should like to know now whether Mr. Hassell will be willing to stipulate with me as to this gentleman's qualifications and then to stipulate in substance that he will testify along substantially the same lines as the other two psychiatrists, that this matter has no immoral effect upon those classes of the community with which he comes in contact generally, that is, in the city of New York where he practices.

Mr. Hassell: Well, of course, I am not going to stipulate the conclusion that counsel is stating here as to the impression or result or effect of the testimony of these two witnesses. I don't think that is proper for me to stipulate that.

1971

I might stipulate that, if I had the chance to examine the qualifications of this psychiatrist as to his testimony being substantially similar to the other two.

Chairman Myers: Why don't we do this? Let Mr.

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1972

Hassell and Mr. Bromley get together during the noon hour and see if we can agree on a stipulation and then if we can't, all right.

Mr. Hassell: I wish you would let it go until two o'clock.

Chairman Myers: I would like to start at one-thirty.

Mr. Hassell: I have other things to do.

Chairman Myers: So have we all.

We will adjourn until one-thirty.

1973

(Whereupon, at 12:05 o'clock p.m., the hearing was adjourned until 1:30 o'clock p.m.)

AFTERNOON SESSION.

(The hearing was resumed, pursuant to the adjournment, at 1:30 o'clock p.m.)

1974

Chairman Myers: Proceed, gentlemen.

CLEMENTS C. FRY resumed the stand and testified further as follows:

Cross Examination by Mr. Hassell (Continued):

Q. Doctor, refer to the June, 1943, issue of Esquire, page 34. That is a two-page size Varga girl in a semi-recumbent pose. She is leaning back on one hand and has her legs folded up under her thighs. This is entitled "Something for the Boys."

Clements C. Fry—for Respondent—Cross.

What sort of a costume would you describe that as, Doctor?

1975

A. I suppose it is a ballet dancer's costume, practice costume.

Q. You would get that from the ballet shoes shown here, a toe dancer's shoes? A. I think so, somewhat.

Q. They look like toe-dancer's shoes with the padded toes?

A. Yes.

Q. Is not the customary toe dancer's costume a short ruffled skirt that hangs down half way to the thighs? A. You mean when they are performing?

Q. Yes. A. I think so, yes.

Q. Then, this costume here would not be customary and ordinary for a toe dancer's costume, would it? A. Not as I understand it, no.

1976

Q. You would say, Doctor, that that material of which this costume is constructed, is quite sheer and tight-fitting?

A. Yes, it is tight fitting.

Q. And that it does not conceal any of the lines of the model's body. We have a side view here, of course. A. I would say it does not conceal any of the lines from the side view.

Q. Do you see the depression down the middle of the stomach, ending up at what appears to be the umbilicus?

A. Yes.

1977

Q. About where the page folds? A. Yes.

Q. Do you note the manner in which the lower end of the costume is cut at the top of the hips? A. Yes.

Q. So as to come up possibly a little on the torso? A. Yes.

Q. Doctor, do you think this picture would be calculated to be sexually stimulating to the opposite sex? A. To some people, I suppose it would yes; not to the average person. And again it would vary with the times, depending upon what thought he had in mind.

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1978

Q. You say it would to the ordinary person at various times? A. It would not. But at various times a fellow might look at this with a thought in his mind and have some thought of the sex connotation. Whether that would be improper or not, I don't know.

Q. So that the average impressionable young man will get some sex stimulation from this drawing? A. It might help.

Q. Now, referring to page 134, Doctor. That is the matter at the lower part of this page, the textual matter, the first column of which reads:

"Social items on the first page included such as these:

1979

"Two weddings are on dit for next week. This weather kind of suggests two in a bed, spoon fashion."

What sort of weather would you think the writer of that had in mind? Hot weather or cold weather? A. Cold weather, I suppose.

Q. Cold weather? A. Yes.

Q. In other words, they lie very close together? A. That is right.

Q. Two persons of the opposite sex lying very close together as indicated by "spoon fashion" does not indicate any sexual connotation or doesn't have any sexual connotation? A. It doesn't to me, spoon fashion. I couldn't quite get that unless back to front.

Q. How would you think spoon fashion meant? A. Well, I should think they might be lying as you would place a spoon; one front is up against the other's back.

Q. One's front up against the other's back and I suppose as closely as possible together? A. That is right.

Q. You don't think that has any indecent— A. No, I don't.

Q. (Continuing) :—sexual connotation? A. No.

Q. Now; coming to the next sentence, an epitaph:

1980

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"Here lies the body of poor old Charlotte,
Born a virgin, died a harlot.
For 18 years she kept her virginity,
An all-time record in this vicinity."

1981

Do you think there is anything nasty or filthy or indecent in that? A. Not to my mind. It is an old time thing. I have heard that for years.

Q. Its antiquity would lend purity to it, would it? A. Not necessarily, or not impurity either.

Q. You think its antiquity would clean up the smut that would have been in it had it been novel? A. No, I think it shows that a great many people have recited that poem as a great many other poems like it that are always recited, a number of them.

1982

Q. Doctor, do you hear that type of poem or ditty or whatever you want to call it recited in mixed, polite society? A. I have heard it, yes.

Q. That is, in the circles in which you move that type of poem is recited without blushing? A. Not in all the circles I move, some of them.

Q. I mean, decent ordinary polite society. A. Well, I try to keep to that.

1983

Q. You said not in all the circles. A. No.

Q. What other kind of circles do you move in? A. Decent people with different viewpoints on life and so forth.

Q. Well, some of those people are more sophisticated than others? A. That is right; some of them are not, as a matter of fact.

Q. Well, the more sophisticated that you refer to, would that be where you would hear this sort of thing recited? A. I would hear it, I believe, in some unsophisticated groups.

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1984

and I can't quote you the poems, but I have heard youngsters telling stories similar to that. Not exactly like it, but a similar type of poem, and letting it go in mixed society.

Q. You think that this accurately and truthfully represents the mores of today, do you, in the average society, American society? A. Again, different groups have different mores and different moral behavior that they condone or condemn.

1985

I don't think that in all groups you can say that the same thing would go on. In certain groups people know they could not and would not be able to recite a poem of that nature. In other groups I think it would be perfectly all right and nobody would be excited about it.

Q. Doctor, does your testimony with respect to Esquire reflect your opinion as your own or as you judge the matters called to your attention here would be regarded by the average normal individual? A. Both. I consider myself an average, normal individual.

1986

Q. And you don't consider by reason of your profession, your daily duties requiring the going into of sexual life histories of hundreds of individuals, that you would have, shall we say, a more sophisticated or broader outlook on these matters than the average normal person? A. I would have a broader outlook, maybe.

Q. And these opinions you are expressing are your own opinions as to the effect this type of matter would have on you? A. On me?

Q. Yes. A. No, not at all.

Q. Well, on who? A. On the youngsters that I feel that I know. I know their psychology and know what they are up against.

Q. Now, on all of these youngsters or on what portion

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of them? A. I couldn't give you a percentage, but there are certain groups here, as I say, that wouldn't listen to these things. Other groups listen to them and recite them and let it go at that.

Q. All of these youngsters that you deal with are post-adolescent, aren't they? A. No, I see them from the age of about fourteen up. I see more from the age of sixteen or seventeen.

The average freshman age at Yale, I think in the past, has been about 18, but with a large number of 17 year old youngsters, and, of course, my practice is not confined to Yale alone. But I would say the groups that I see would lie between the age of 18 up to about 23.

Q. Doctor, are you in a position to define the average normal adult, whether the sex be male or female, so that we will have some normal average that we are talking about? A. No, I think that is one of the most difficult questions anyone could ask.

I don't think anyone can define what the normal adult is. Is it in terms of physique or temperament or religious beliefs or reactions to various things.

I don't think anyone can define what a normal adult is. We use that term rather loosely and I don't think any of us know what it is. I think normal is the people we like and abnormal is the people we don't like, usually.

Q. So we can't get a definite basis or standard by which we can judge what is the average normal individual? A. No, I don't think so. For instance, in terms of patients that I have seen, as I have stated before, most of their friends consider them as very normal and average run people. Where do you draw the line?

The boy who gets into a sex difficulty of some type, is

1987

1988

1989

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1990

he abnormal or is he normal? That is a very difficult thing to know.

Now, the youngster who does a little stealing, is he abnormal or is it normal to steal? Is he an abnormal individual because he steals?

Q. Well, we will narrow it down this way: Is this normal or average individual you have in mind when you are testifying here about this material, the same sort of person who is allowed to roam at large, walk the streets, buy magazines from newsstands, and has nobody restraining him? He may be very young, he may be adolescent, he may be post-adolescent, he may be male or female.

Is that the average normal individual who is at large that you have in mind in this testimony? A. It is what the outside world considers an average normal person. For instance, I see a great many people that I put down as psycho-neurotics, but their parents come to me and say "This has been a normal girl", or possibly "This has been a normal boy", and they say "We can't see how this thing has ever happened to him."

Maybe this person has a slight depression or slight fear state. Again, she may be troubled about what she should do in her relation with boys and girls and so on.

When I see them I might put down on my folder that this is a psycho-neurotic depression, we will say, in this individual.

But, I don't lay any emphasis on that in terms of abnormality. I don't think we can put people in two groups and say "This is a psychopathic individual" and this "is a normal individual." We all have these little things in our lives.

Q. In your schizophrenia cases, is that the right way to pronounce it? A. Schizophrenia, yes.

1991

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Q. In those cases did the parents usually tell you that the young man or young woman has shown peculiar behavior over most of his life? A. In most cases I think that would be true.

1993

Q. Where in a good many cases they indicate their surprise? A. That is right.

Q. That anything of that sort would or should develop? A. That is right.

Q. Doctor, referring further to these items, we have the next item on the next column, page 134, which reads:

"Or: 'In future, all communications to the Muldoon will be marked with an asterisk to show that the editor disclaims responsibility. Each correspondent will have his own*."

1994

Do you understand what that means? A. No.

Q. If emphasis was laid on the symbol at the end of the sentence, the asterisk, and you paused in saying that word, as-ter-isk? A. Now I understand, as-ter-isk.

Q. That hadn't occurred to you before, Doctor? A. No, it hadn't.

Q. How many times have you gone over this? A. I think I read it two or three times before.

Q. But that never hit you before? A. No.

Q. You say that that has no filthy, dirty, improper connotation? A. No, it is quite usual for people to say their behind or ass. Again, that term is being a little more used than we realize.

1995

Q. You think it is pretty generally used in polite society? A. No.

Q. But the fact that that sort of a thing is included in a magazine of this sort circulating among men does not lead you to believe it has any filthy or indecent connotation? A. No, not to me.

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1996

Q. Now, Doctor, take the next item;

"When Chipeta, queen of the Utes, went to Washington, Day pretended that she had been seduced there by an eminent gold standard statesman. He followed the case for nine months, announced the birth of a boy, named by Day for the statesman, and chronicled the alleged boy's growth for years by that name".

Doctor, do you think there is anything indecent in the reference to a seduction? A. No, I don't.

1997

Q. That is the ordinary usual thing occurring in our newspapers and magazines circulating among the average American citizens? A. Well, I think when the Flynn case was on it was in every paper. I don't remember whether the word "seduction" was used or not, but certainly it was inferred.

Q. You think there is nothing indecent or filthy in that reference? A. I don't recommend seduction. I personally don't think it is necessary. I don't think the statement there is necessarily filthy.

Q. Now, referring to the July issue, Doctor, and to the item under "The Sound and the Fury", page 10. You will note there reproduced a letter by some man who signs himself "Sincerely yours, Fred Appel," and is addressed "Paradise, Pa."

1998

In the last line he says: "So, I'm willing to pay my half buck for just a peek at the Hurrells and Vargas."

Do you think that represents the manner in which Esquire magazine is regarded by the young men you come in contact with? A. No, not necessarily. I suppose some of them would be willing to pay just for a peek, I don't know.

Q. But this indicates that this young man is largely in-

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terested in the Hurrells and the Vargas. A. That is right.

Q. The pictures of scantily clad women? A. That is right.

1999

Q. Would you say that that was an exceptional thing or that is the usual thing? A. I wouldn't say either, I don't think it is exceptional and I don't think it is the usual thing. I think you will find again, a lot of the so-called ordinary normal youngsters, some of them would like that, some of them wouldn't, some of them would buy it to look at it and some of them would buy it for other reasons.

Q. As I understand it, Doctor, some of these ordinary young men would get quite a sexual kick out of these pictures and others would not? A. Take the word "quite" out, and I think they would get a sexual kick. It is according to what you are trying to imply by sexual kick.

2000

Q. Now, referring to the matter on page 76. That is the picture with the simple figure in the foreground showing a rather buxom woman with large breasts and her skirts pulled up, kneeling.

Do you think there is anything objectionable— A. No, I don't.

Q. (Continuing): in a magazine of this sort to carry a picture of that kind? A. No, I don't.

Q. Doctor, this magazine does not purport to be a theatrical magazine, does it, from your understanding? A. No. It has play reviews and so forth, but not a theatrical magazine.

2001

Q. Look at page 87. Here we have again Exploits of Esky. Doctor, when you were looking this material over preparing to testify had you been told that Esky was a figure that was supposed to represent the spirit of Esquire?

A. No, I hadn't.

Q. That had not occurred to you until you and I discussed

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2002.

it before? Until we discussed the prior exploits of Esky comics? A. That is right.

Q. That is correct, isn't it? A. That is correct.

Q. Now, look at cartoons 55 and 56. These cartoons showing the mermaids and Esky and a character in a sailor's cap and uniform, Verne. In the first cartoon, 55, Esky has quite a handful of money. As a matter of fact, it takes both hands to hold it apparently. He is looking rather goggle-eyed in the direction of the mermaids. Verne seems to be talking to him or whispering in his ear. Then this legend underneath: "You see—women are women the world over." Esky turns to Verne saying "there's something I have always wondered about mermaids."

2003

"I wouldn't know", replied Verne.

What do you think Esky means, "always wondered about mermaids". A. I don't know.

Q. You couldn't guess, could you, Doctor? A. If you put it into my head, I can.

Q. Would you guess that he had been wondering always whether mermaids could walk around on land without feet?

A. Now, that you bring it to my mind, I remember a statement that is always used. People wonder about Chinese women. That is a common term used. That may be what he is implying. I don't know.

2004

Q. But here, you wouldn't say that this referred to how mermaids were equipped sexually? A. It may be. I didn't take it that way when I read it.

Q. Now, in the cartoon numbered 56, the mermaids' breasts are very prominently displayed? A. That is right.

Q. And Esky still has his hands full of money. And you see nothing indecent or objectional from a morality standpoint in these cartoons? A. No, I don't.

Q. And the text underneath? A. No, I don't. I suppose

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like a lot of things, if I let my imagination go I might do it, but I could do that with anything if I were determined, to make it sexy.

2005

Q. Well, Doctor, considering the nudity of the mermaids in those cartoons, and the text underneath, the whole thing would have very little meaning if you didn't imply some such sex connotation, would it? A. As a matter of fact, this whole thing has very little meaning to me as I read it.

Mr. Bromley: Did you ever see a mermaid dressed,

Mr. Hassell? Just yes or no.

2006

By Mr. Hassell:

Q. Doctor, turn to page 141. Did you read this boxed in material? A. Yes.

Q. How many times did you read that? A. I don't recall.

Q. Now, would you say that this is apparently written by a dog crank? A. A dog crank?

Q. Crank. A. I don't know.

Q. Maybe we had better read it and refresh our recollection of it. A. All right.

Q. "Dog's Worst Friend", is the title. It reads:

"People
who have dogs
who shouldn't have dogs
I hate them."

2007

People
who have dogs
and a mink coat
and think they are doing their dogs a favor
by taking them out for a walk

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2008

and walk very fast
 and pull at the leash
 so that the dog gets no chance to smell a hydrant
 or a tree
 or another dog
 I hate them.
 Who the hell ever asked them to
 have a dog?

2009

People
 who have dogs
 French poodles
 wise and sapient dogs
 and clip them fore and aft
 so that they look
 and feel
 like Goddam fools
 I hate them.

Who the hell are they to make
 dogs foolish?

People
 who have dogs
 Pomeranians.
 Pekineses (except one)

2010

Chihuahuas;
 Who carry dogs like muffs
 who train dogs to carry packages in their teeth
 put sweaters on them
 bows on them
 polish on their toe-nails (they do, so help me).
 I would like to plant them in
 Central Park
 in a long row
 and introduce a lot of dogs to them."

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Now, Doctor, how do you think he would like to plant them in Central Park? A. I suppose under a tree.

2011

Q. You mean like a tree; their legs in the ground and they would be upright like a tree? A. I didn't think of that. I thought he meant just planted there and he hoped the dogs would come and urinate upon them.

Q. Do you mean buried? A. That is the first way I took it.

Q. Central Park isn't a burial ground? A. No.

Q. And he is referring to hydrants and trees, things that dogs use? A. Yes.

Q. So, would it be natural to think that they would be planted half way up and arranged in rows so that the dogs could come along and make use of them as they come along? A. You are putting that idea in my head.

2012

Q. If that is a reasonable interpretation of what the language means, do you think this is a filthy article? A. No, I don't think it is filthy. It may be in bad taste; I don't know.

Q. You don't think it is a filthy subject of conversation to go into the habits of dogs in this way? A. No, I don't think so.

Q. You think the mores of the times permit that sort of talk in polite-mixed society? A. I don't think very many people would mention it. Some might. I don't think it would be an ordinary topic of conversation. We teach children to say "wee wee" or some other term, and it means the same thing, and there is the common expression that kids use, another thing that kids do.

2013

I had a case a few days ago of a kid who had been urinated on by his friends. Kids do it. That isn't a nice thing to do, I suppose, but it happens.

Q. And a discussion of that sort of thing in a magazine

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2014

that would be found on the newsstands, and circulates through the mails, you don't consider is filthy or indecent? A. I don't think it is filthy or indecent. I will say a great many people wouldn't like it. It would sort of offend their delicacy.

Q. Do you think that would apply to the average normal person? A. I think the average normal person would perhaps read it and let it go at that. Some would laugh at it and some wouldn't like it.

2015

Q. Turn to page 146. There we have the advertisement of the Esky buy-products. In the center of this page to the left there is a picture of a young woman with red hair, lying on her stomach.

Doctor, would you say this model is clothed? A. No, I don't think she is.

Q. Entirely unclothed, save for the transparent hat? A. Yes.

Q. That lies across her thighs and buttocks? A. That is right.

Q. And that doesn't conceal anything, does it? A. It doesn't conceal the crease between her two muscles. It conceals something, however.

2016

Q. Do you think that sort of an illustration in a magazine of this sort is entirely acceptable to the average individual? A. I don't know how many people buy that. I have no idea of how many people would send for that. I couldn't say.

Q. You don't know how many people might be shocked by it? A. I don't know how many people might be shocked by it.

Q. I see. Now, refer to page 148. Doctor, at the bottom of the last two columns on this page where there is a cartoon drawing showing a perfume counter, a young lady behind the counter, a placard or card on the counter reading

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"Burning Desire" and another placard reading "Baby's Breath", and in front of the counter an elderly gentleman with sparse white hair who apparently is the floor-walker, and he is saying to the clerk the legend underneath there: "I think, Miss Hill, it might be advisable to display those a little farther apart."

Doctor, do you see the point of that joke, if it can be so called? A. Yes, I do.

A. Well, following the "Burning Desire" there is "Baby's Breath" which means if you have a burning desire, why, then you must take the consequences of perhaps a baby's breath. Now it may be warning married people, or it may be warning unmarried people by, here is the consequence you have to follow.

Q. And this cartoon is designed to make light of the relation which results in the birth of a baby? A. I don't know whether it makes light, no. It also gives you a little warning. It gives you some warning. Yes, I guess it makes light of it a little because it gives you a little warning.

Q. You think it is this sort of thing that is entirely decent to be made the subject of conversation among the average mixed group of individuals and to be carried in a magazine of this sort? A. I would say a lot of good, average normal people would recognize that as a fact, and there are people you know that won't have anything to do about it, about the thing.

Q. There are a lot of good, average normal people who would take that to be an obscene joke, wouldn't they? A. Yes, I wish they wouldn't.

Q. Referring to the August issue, Doctor. Page 10. "The Sound and the Fury." We have in the first column "Con-

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2020 sidered Opinion", which advert's to the 20 percent do, 20 percent don't, et cetera, opinion of the prior issue. This reference "In your May issue (this year, too!). page 93, article entitled 'Broadway for the Boys,' it is said '20 percent don't, 20 percent do, and 60 percent might.'

"While in no way representing the opinion of the Navy Department, it is the considered opinion of this patrol squadron that 20 percent *don't*, 20 percent *do*, and 60 percent *don't, get the opportunity.* Now you guess which category we fall in!"

2021 Do you think the writer of that letter to Esquire got the illicit sexual relation inference from the "Broadway for the Boys" article in the May issue in Esquire, page 93? A. Yes.

Q. And would you say that is a normal reaction to be obtained from that article by the average normal individual? A. Some people wouldn't react to it that way, no. Some people would react to it entirely differently.

Q. I am now speaking, Doctor, of people who are capable of some intelligent thought. A. Yes, but you can't say that a so-called normal individual is going to react to everything in this world in the same way as his friend who is considered a normal individual. There are a lot of different elements that enter into this thing.

2022 Q. And that applies to all of this material in Esquire? A. Yes, I think so.

Q. Now, referring to page 30, the article "Many Wives Too Many" with the Rx prescription symbol underneath the name of the author. Did you read that article, Doctor? A. Yes, I did.

Q. How many times did you read that? A. I read that

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one only once because I was familiar with it and knew the story.

Q. Are you familiar with Kretschmer? A. Kretschmer's book?

Q. Yes. A. Very. In fact, I wrote an article on it.

Q. You wrote an article on it? A. Yes.

Q. Doctor, do you think the arrangement of the sex life in a situation where a man had six wives is a subject of decent, every-day conversation, or in a magazine of this sort? A. I didn't take the article from that standpoint. I thought these women portrayed to this individual the various needs that a man has in his life. In other words, he needs various types of women to more or less help him get through life. It is an old story that many people have stated before, that the only thing to do is have so many wives. Some people say four, one in the kitchen, one in the bedroom, a secretary who really does things for you, and a smart woman around you. This is an old type of story. I have heard that, and, in fact, one of your judges, not a Supreme Court Judge, but one of the judges used to tell this as his philosophy of life; and in polite company and to nice people.

Q. In other words, he was in favor of polygamy? A. No. I mean he stated it in a joking manner.

Mr. Bromley: I think you gentlemen are discussing two different things. This story has to do with Dr. Joad's proposal of plural marriage.

The Witness: Yes.

Mr. Bromley: Kretschmer's article had to do with the physical characteristics of Pyknic and Leptosome.

The Witness: Yes, I knew that. I let it go.

2023

2024

2025

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2026 *By Mr. Hassell:*

Q: Now, let us see, Doctor. Beginning in the second column at the top of page 30 "In figuring out a schedule for a six-wife batting order—which is something that should be done before it's too late—the team probably would go on a weekly timetable about like this:

"Amaryllis, the wife to go out to dinner with—four times a week. Unless Amaryllis knows the places that have made arrangements with the black market and unless Dr. Joad is lush with shillings, she can count on one of the four sessions being at a fish-and-chip coop where she will have to perch her fanny on a peg or stool."

2027

Do you think that is a decent reference to that part of a woman's anatomy? A. It is a common reference, yes. What do you want to call it? Do you want to call it her gluteus maximus? What is it you want to call it?

Q. Couldn't you say she sat on a stool? A. You could say that.

Q. Why do you have to say "perch her fanny." A. You don't have to say it, but a lot of people do say it.

2028

Q. As a matter of fact, that sort of language doesn't ordinarily go in polite society, does it? A. Oh, "fanny" is referred to a great deal.

Q. But isn't that the language of the gutter, Doctor? A. No, oh, no, I can't say that.

Q. That isn't the sort of expression, "hurt your fanny" that is an everyday occurrence in polite society? A. I have heard fathers say to their children, "I will spank your little fanny if you do that again."

Q. Let us go ahead with the reading of it, Doctor.

"She will have to try to turn on her charm where there are no soft flattering lights. A great risk in one of those

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places is that Amaryllis may see in them a soldier, sailor, marine, or shipbuilder who looks like he would be good to go out with after going out to dinner."

What does that mean, Doctor? A. That she would like to go out with the soldier.

Q. That a married woman would like to step out with a soldier for a good time? A. Yes.

Q. Is that ordinarily a commonly accepted practice? A. Society doesn't like it, but it is done a great deal I hear.

Q. Society doesn't like it, but I am asking you whether it is an accepted practice. A. It is a practice, yes.

Q. I see. Then, reading: "That would leave Dr. Joad with a check for a souvenir.

"Priscilla, the wife to go to church with—twice a week. Sunday and prayer meeting night. Every time the parson referred to the Seventh Commandment, Priscilla probably would nudge her gentleman friend and whisper 'What are you, a man or a louse, letting him make that crack at us?'"

What is the Seventh Commandment, Doctor, do you know? A. Let us see if I can recite that. I am repeating it to myself.

Mr. Bromley: Count on your fingers.

The Witness: You got me there. I will have to ask you.

By Mr. Hassell:

Q. Is it "Thou shalt not commit adultery"? A. I think it is, yes. I am trying to think whether it is covet another man's wife or commit adultery.

Q. That is what is indicated here in the text, isn't it? A. Yes.

2029

2030

2031

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2032

Q. The wife Priscilla takes umbrage at some statement of the parson's and she applied it to herself. Then it goes on, over in the first column of page 31:

"Rosamund—the wife to make love to. Something seems to indicate that when the roster includes five other wives, Rosamund will have plenty of time for keeping up with the latest books and movies."

What would you say that has reference to? There wouldn't be much time for lovemaking, is that right? A. That is right, yes.

Q. Going ahead with the reading:

2033

"It is chivalrous, however, of Dr. Joad, who was born in 1891"—by the way, Doctor, when were you born? A. 1892.

Q. 1892? A. Yes.

Mr. Bromley: I was born in 1893, Mr. Hassell.

By Mr. Hassell:

Q. —“to have the assortment include a wife for loving. This can be on a high spiritual plane if both of the loving couple get in that mood at the same time.

“Experience of many who have run some test heats on the six-wife idea, is that each woman is apt to get the notion that she is the wife to make love to.”

2034

Would you say that sentence has reference to men who have had six wives at one time or in succession? A. No. It is this man who has six wives at one time.

Q. And there is no such animal out of jail in this country? A. No, that is right.

Q. Going ahead with the reading:

“The cook-stove wife may consider as part of the deal.

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her loving six-time poppa giving her at least an adoring pat on the sunny south." 2035

What part of the anatomy does that refer to? A. I suppose that is our old fanny back again.

Q. That is a commonly accepted reference, Doctor, is it, to that part of the anatomy in polite society? A. You mean the sunny south?

Q. Yes. A. I never heard it before.

Q. But you didn't have any trouble in gathering what it meant? A. Not a bit, no.

Q. "Sunny south as she's bending over the cook-stove and letting her pores drip onto the skillet."

"The game-playing wife while gazing at a map of the Lake district in deep study and thinking of the jolly times Coleridge, Southey, and Wordsworth spent in that territory, might get in the frame of mind for a little loving herself." 2036

"In fact about the only wife of the stable who might not rate herself as a competitor of the wife-to-be-made-love-to possibly would be the wife-to-go-out-to-dinner-with. That woman would be no dummy in calling her shots on the menu and elsewhere. When it came to time for the over-sexed spouse to get around to his loving assignment, the feeding female might also have other arrangements in mind, and out of the entire sextette she might be the one least inclined to cause any loving trouble. As long as the six-timing boy chum would show up in time for her to tuck her bib up she would be easy to get along with."

Doctor, do you think this article is in keeping with the mores of the day as to the discussion of the marital relations and decent behavior between married people? A. Well, the only way to make marriage go is not to have six wives and not to have this idea that you need that many women in your life."

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2038

After all, if you want to keep the family intact, you have to consider that you have an aim and that you can't go here and there to get various phases of your life satisfied. That is, your wife may not be very intelligent, but you can't be going out with some intelligent woman all the time because you are going to get into trouble later on.

Q. You think this advocates or does not advocate stepping out and two-timing so-called? A. I don't think it advocates it. I think it gives a description of some men's thoughts about what they like in life.

2039

Mr. Bromley: It ridicules Dr. Joad's proposal, seriously made, for multiple marriage, doesn't it?

Mr. Hassell: I object to counsel—

Mr. Bromley: Why do you misrepresent it? You know what it is.

Mr. Hassell: I am not misrepresenting it. The witness testified he read it twice. He is an intelligent man and he knows what it means.

By Mr. Hassell:

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Q. Doctor, you say there is no immoral or indecent connotation to be derived from this article? A. No, I don't so consider it.

Q. The various references therein, some of which I pointed out to you, are not filthy? A. No, they are not.

Q. Now, refer to page 38. There we have another of the page-size Varga pictures. This model, done in flesh tints, has on a red costume of the same scanty variety as some of the others we have seen. But in this instance this model has one silk shoulder strap in her left hand as if she is in the act of removing it. A. Or putting it on.

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Q. Well, she is not standing in a position, nor is her hand in a position, to indicate she is putting it on, is it? A. I can't see her move yet.

Q. You would say she is either in the act of dressing or undressing? A. I don't know.

Q. So far as this shows? A. Oh, I wouldn't know.

Q. You know of the way stripteasers operate, don't you, Doctor? A. Yes.

Q. That they will take down a shoulder strap like that and tease their audience. Would you associate that gesture in this picture with the smile on this girl's face? A. No, I would not.

Q. Would you admit that that is quite a scanty costume? A. It is a scanty costume. To me it is the bathing suit again.

Q. The bathing suit? A. Yes.

Q. Would you say that it emphasizes quite markedly the breasts? A. The breasts are large.

Q. And they stand out. The costume fits quite snugly underneath them, doesn't it? A. That is right.

Q. Would you say that this costume does not conceal very much of the body of the model? A. Well, I don't know what to say about that. No, it doesn't conceal very much.

You know a woman has breasts and you know a woman, when she is walking along the street in her clothes—some clothes emphasize her breasts. You don't pay much attention to it.

Q. Have you ever seen breasts emphasized as much as they are emphasized here? A. In some clothes, evening gowns, and a sweater girl as she walks along.

Q. If this girl had on a sweater it would not fit quite so snug under the breasts? A. I can't quite visualize, but

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2044 I know that factor is that the breasts seem to be emphasized.

Q. It shows the outline of the breasts to a certain point and then the sweater falls off or stretches to the abdomen down below. But here we have a very close and snug fit underneath, as though it is almost a part of the body, don't we? A. Yes, it fits snugly.

Q. Doctor, would you say that any of these young men that you have referred to as your patients, or that you had occasion to observe, would or might get a sexual kick out of this picture? A. They might.

Q. They might be sexually stimulated? A. They might.

2045 Q. Now, on page 73, there we have a color photograph showing the body of the model who is in a recumbent position, is she not? A. Yes.

Q. In natural colors, natural body colors. This material thrown across her breasts, covering one arm and crossing the upper part of the left arm, and the material across the middle of her body, is rather sheer material, isn't it, thin? You can see portions of the body through it. Is that right? A. Yes, you can see some portions of the body through it. In some places it is doubled up, I guess.

Q. Would you get the idea that this model is clothed in this way to facilitate the mental undressing of her by readers of Esquire? A. No, no, I would not.

2046 Q. She does not appear to have any clothing on underneath this covering, does she? A. No, but people who do this mental undressing don't need a half clad person. They just do it in their heads without any encouragement.

Q. But isn't it a fact that the less clothing a woman has on, up to a certain point, the more some people are liable to do that? A. And vice versa.

Q. You would say there is nothing morally objectionable

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about a model posed in this posture— A. I don't believe so.

Q. And with as little clothing on as this? A. I don't believe so.

Q. Now, refer to the picture at page 89. This is the "Paste Your Face Here" picture.

Doctor, would you say that, looking at the stage of that picture, that this was posed probably in a studio? A. Yes, I guess so. I would say so. I don't know; I should say so.

Q. The backdrop is not a very good representation of the ocean, or water, is it? A. No, I guess not.

Q. This model is seated on the shoulders, astride of a sailor whose face has been blanked out, and the legend printed there 'Paste Your Face Here.'

Do you think that is a decent studio pose that is entirely accepted in the mores of the day? A. It is the type of thing you see on the beach a lot, people posing in that way.

Q. But apparently this is not on the beach. It appears to be a posed picture in a studio. Do you advocate young men, who seek your advice, having such close contact with young persons of the opposite sex? A. I never advise them as to what they should do along these lines. I will discuss it with them and talk with them about what they are doing. I don't say "I think you better sit on the shoulder of some one."

Q. But suppose in taking the case history of one of your patients, he or she, as the case might be, has related that he or she had done this sort of thing. A. Well, I would ask why she emphasizes that to me, why does she bring that up.

Q. Do you think this pose is an entirely moral and decent one for widespread distribution throughout the country in magazines of this sort? A. Yes, I think so.

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2050 Q. You see nothing objectionable in it at all? A. No, I don't see anything objectionable.

Q. Now, refer to the cartoon on page 90, the next page, upper left-hand corner.

It shows what appears to be a factory scene, or possibly a lathe on a bench, and two females in working costume in the background, and in the foreground a female in a wedding dress with veil on. Underneath it it says: "She came directly from the wedding—boy! that's patriotism."

What do you think that has reference to, Doctor? A. I can't see anything—

2051 Q. You can't see anything in it? A. —except that she came directly from the wedding and is now working on some machine.

Q. Wouldn't it be most unusual for a young woman to come to a factory, possibly a war plant, to work with machinery, dressed in the costume that this one is dressed in?

A. Yes.

Q. And would you consider there is any part of this joke, if it may be called such: that she was so patriotic that she wouldn't even remain at home to take her wedding gown off, wouldn't remain with her husband for sweet moments, but came to the factory instead? A. Now that you put that into my head, I can see that is the way some people would look at it. I happen not to have interpreted it that way.

Q. You would not have taken it that way at all? A. No.

Q. Taking it that way, Doctor, would you say there is anything morally bad or objectionable or indecent? A. I think it is quite silly of her.

Q. Do you think there is anything morally bad or indecent in such an alleged joke? A. No, I do not.

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Q. This would be one of the wedding night jokes that are passed around in stag parties and that sort of thing?

A. I don't know.

Q. That sort of joke, Doctor, isn't commonly told and accepted in polite society, mixed company, is it? A. I never heard this one before. I think jokes like that are told, yes. Everyone with those thoughts—I don't think it makes much difference whether they are polite or not.

Q. Now, at page 105 there is a cartoon or drawing showing what appears to be sort of a worked-out individual clinging to what looks like a palm, a cocoanut palm, on the shore, and in back of him are four grinning buxom South Sea Island women, and approaching in what looks like a canoe is a man in sailor costume, and underneath is the legend "Thank God—help at last."

Do you see any sexual connotation in this cartoon, Doctor?
A. Yes, I think there is.

Q. Do you get the inference that the man on shore needs help to fulfill his sexual obligations to the females shown?
A. I don't know what he has been doing. He may have just been laying them up or he may have been chasing them around, or it may be that he has been fulfilling his sex life. I think there is a double meaning to this.

Q. Would you think that the sailor in the canoe is coming to take him away, to rescue him? A. You could interpret it as that.

Q. It is a rather small boat for two men, isn't it? A. I don't see the back part of it, so I can't tell you.

Q. So, since it is so small, you wouldn't entirely get that connotation from it, would you? A. Well, there have been an awful lot of people on rafts lately, and they are small.

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Q. In other words, he would rescue the other fellow by letting him come along in the water and take hold of that thing to keep him up? A. You could interpret it that way.

Q. But the natural interpretation is the one of sexual relief, isn't it? A. That would also be sex relief if he took him away, relief from being attacked.

Q. But the individual in the canoe, would you say he has an anxious, lead-me-ashore look? A. No, he has sort of a dumb look, as a matter of fact.

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Q. Doctor, you would not infer any objectionable, immoral or indecent sexual connotations from that cartoon joke? A. I would say that some people could very readily say that this fellow has been up against it, that the girls have been after him quite a little from the sex standpoint, and that is most likely what they were inferring.

Q. I see.

Now, look at page 110, Doctor, and there we have a cartoon showing in the far background a man with a walrus mustache and rather large eyes, looking at the nurse who has just passed him and his hat has blown up off his head. In front of the elevator appear to be a doctor, he has a satchel in his hand, and possibly an interne standing beside him. They are eyeing the woman.

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And in the close foreground another man with goggle-eyed backward look at this nurse who is minding her business walking down the hall with a tray in her hand.

Note the nurse has rather prominent breasts and, this legend underneath:

"That's Miss Blimpton, our special nurse for low blood pressure patients."

Do you associate the name given to this female character in this cartoon with the size of her breasts, and that, in

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turn, with the reference to the low blood pressure patients?

A. No, I don't, not the name, no.

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Q. How about the breasts? A. I can see the whole figure is that of a girl who might have some effect on these low blood pressure fellows. It is a typical nurse's joke where the fellow says "Be sure to get me a good-looking nurse," and he kids his wife about a good-looking nurse.

Q. You wouldn't say this is a good-looking nurse, would you, Doctor, as far as the face is concerned? A. Well, it is that moon face that some people like.

Q. A moon face. And what sort of eyes would you call those? A. They are sort of closed.

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Q. And you can't see her nose except for a tiny speck. There is nothing to recommend itself in any of her features, is there? A. No.

Q. Well, isn't the point of that joke the name and the size of the woman's breasts and the stares of the men?

A. No, I think the emphasis is on the fact that she is a nurse. It is the old story.

Q. It appears to be in a hospital, doesn't it? A. Yes.

Q. That would not be a strange thing, to see a nurse in a hospital, Doctor? A. No.

Q. And you think that no objectionable or immoral or indecent connotation can be derived from that cartoon whatsoever? A. That is right.

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Q. Would you say that if these men are discussing the size of these women's breasts particularly that that is the thing that is ordinarily done in polite society? A. No, I don't think so.

Q. Page 127, Doctor. Here we have a drawing in color showing a young lady prone on the ground with pillows under the upper part of her body, having her legs painted, and one leg is high in the air and the girl who is doing

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2062 the painting is pencilling a line to indicate the seam of the hose down her leg, and the stocking extending well up midway or beyond her thigh.

Doctor, would you say that the costume, that the prone model has on is underwear? A. I would assume that.

Q. That is the bra and the panties? A. That is right.

2063 Q. Underneath that is this legend: "Hew to the line, Bertha, let the skirts fall where they may". The skirts, would you think, would refer to the skirts of the panties, the panty legs? A. No, I wouldn't. What I would feel that was or what they are trying to infer is to get the painting on the legs, get the line up and let the skirts fall where they may, let her wear short skirts.

Q. After she gets the legs painted? A. Yes.

Q. You say there is nothing immoral or objectionable or indecent in a cartoon of this sort in a men's magazine? A. I do.

Q. You say you do? A. I do.

Q. Now, page 144. This has a reference to an article: "Offensive on the Home Front", which starts on page 56 and is continued on this page, third column from the bottom of the next to the last paragraph:

2064 "Once he had slapped a prostitute in Bordeaux who had persisted in keeping his cap, but that didn't count. He was amazed to find himself slapping his second woman. Dorothy began to cry loudly and headed out of the room. Dizzy and with the taste of blood in his mouth he noticed how large the uniform made her behind look".

Doctor, did you read the whole of that article or story? A. No, I didn't.

Q. You just read part of it? A. I don't think I did. Let

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me get back and look at page 56. I'm afraid I didn't read that whole article.

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Q. But taking that item do you think it is entirely decent to refer to the anatomy of a female in a publication of this sort in that fashion? A. I do, yes.

Q. You think there is no filthy connotation to be had from it? A. No.

Q. That that sort of thing is ordinarily accepted by the average individual— A. I think so.

Q. (Continuing): —in society today? A. I think so. Some people do object to the word "behind".

Chairman Myers: This is a good point to take a recess for a few minutes.

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(Whereupon, a brief recess was taken.)

Chairman Myers: We will proceed.

By Mr. Hassell:

Q. Doctor, referring to the September issue of Esquire, page 10, third column under the heading: "Conservative suggestion", what appears to be a letter or an excerpt from a letter reading: "Recently I have read that Varga paints all his models in the nude and after that puts their clothes on. (I mean the pictures, of course.)

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"Why doesn't he leave them as they are, thereby cooperating in this national emergency by conserving paint?" And signed "height of expectation".

Doctor, do you think that is the normal reaction the average young man looking at the Varga girl picture might get? A. No, I don't think so.

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Q. Do you have any idea why this is printed in Esquire?

A. No, I haven't.

Q. You wouldn't think it was designed to indicate what the average young man interested in the Varga girl pictures wants? **A.** No, I don't think so.

Q. Now, if these Varga girls were pictured in accordance with this man's suggestions—I say man's; I correct that, this person's suggestion—do you think that would be any more indecent? **A.** Not necessarily, so.

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Mr. Bromley: I object to the characterization more indecent. I don't think counsel ought to phrase his question that way. It is not fair.

Mr. Hassell: I will be glad to rephrase it.

By Mr. Hassell:

Q. Doctor, would you think if this Varga girl picture or pictures were painted without any clothing or any semblance of clothing on, they would be indecent, immoral and objectionable from a sex stimulating standpoint? **A.** I don't think so. I don't think it would make much difference. It might be to some people. Again, I can't say that.

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Q. Now, referring to the Varga girl picture at page 38. The clothing this model has on is not concealing, is it, Doctor? **A.** No.

Q. It doesn't conceal a single thing about the model, does it? **A.** The shoes conceal part of her feet.

Q. You can see her painted toe-nails? **A.** Yes.

Q. You can see her foot down to the instep or the heels? **A.** That is right.

Q. But the garment, if you can call it that, the filmy gossamer affair painted over the small part of the back

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and down on her thighs, up over her breasts, doesn't conceal or doesn't render her less naked, does it, than if it had been left off entirely? A. Not much.

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Q. You say not much. What does it conceal? A. Well, it symbolizes that she has something on. To some people that has great meaning.

Q. To some people that would lend piquancy; would it not? It would lend zest or assist in the kick to be derived from it? A. You mean to have it on or off?

Q. To have this filmy affair on. A. Yes, I suppose it would.

Q. She looks a little less undressed, but as a matter of fact the garment doesn't conceal anything? A. Anything in terms of the side view, that is right.

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Q. Doctor, did you notice it is entitled "Military Secrets" and if you have read the verse it refers to a boy she has in the Army, one in the Navy, and one in the Marine Corps. She has in her hand a diary, and she has an expression on her face with her mouth puckered up, indicating that possibly she anticipates being caught or something, or having these military secrets revealed.

Would you say that this cartoon is not calculated to incite sexual desires on the part of young readers, young men readers of Esquire? A. It might stimulate them to some sex desire, yes.

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Q. But you say that this picture painted in natural colors or what seems to be natural colors is in no wise morally objectionable or indecent? A. I say that, yes.

Q. On page 43, here we have two slave girls on a stand and a sheik-like person with a bag in his hand, waving his hand out to what looks like an American soldier in the foreground, who is standing among persons dressed in Near East costumes, a tank in the background, and the legend: "Sold American".

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In examining these slave girls, Doctor, would you say that they appear to have nothing on the upper part of their bodies except a jacket affair open in the front? A. That is right.

Q. Would you say that these hair-do's on their heads are Egyptian or Moroccan or Near Eastern or American? A. I don't know. They may be French.

Q. They may be French? A. I don't know.

Q. Is it common to vend slave girls among the French? A. I believe so.

Q. Do you see any difference in the shape of the face, the features, the hair-do's on these two figures, from what you might expect to find on perfectly respectable American girls? A. Yes, I think so.

Q. You say you do see something different? A. I don't see anything different, no.

Q. Now, Doctor, what do you think a soldier, an American soldier, in North Africa, if that is where this setting is supposed to be, would do with two slave girls if he bought them? A. I don't know.

Q. Do you notice he has money in his hand that he is holding up? What would he do with them? A. A lot of things, I suppose.

Q. What would be implied by this cartoon, reasonably implied? A. I don't think that it necessarily implies that he is buying them for immoral purposes.

Q. What else would he do with them? A. He might have a good time in lots of ways. It may be sort of symbolic of the fact that "here is a guy with money". They are his and he is going to take them out.

Q. This American soldier would not expect that these North African slave girls, if such they be, might be good dancing companions? A. They might be very good dancers like the Geisha girls.

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Q. Do they dance our dances? A. The Geisha girls?

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Q. These North African slave girls. A. I have been told that the boys have been teaching them.

Q. And you think he is buying them to give them dancing lessons? A. I don't think so.

Q. You don't think he would buy them for the conversational entertainment he could have with them? A. He might. As a matter of fact, I would have to know more about this boy.

Q. The ordinary American soldier does not speak French or Arabic, or whatever the natives speak over there, does he? A. Perhaps not.

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Q. So, he would not get much entertainment, as far as conversation is concerned, from them. What other connotation do you attach to that? How could he make use of them? A. Do you mean this particular thing?

Q. Yes. A. Thinking in a rather broad manner, after all, these are rather lonesome soldiers and they want women for various purposes.

Some of them want women for definite sex purposes. The Army has to warn the boys about venereal diseases, they have to take up the question of sex with them, knowing that might help it. He might want them for companionship or to show off to his friends, to boast and so forth.

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Q. What companionship could he have with them in an Army camp in a theater of action, Doctor? A. He couldn't bring them into the Army camp even if he bought them.

Q. He would have to farm them out some place? A. Yes.

Q. You don't think the natural assumption to be attached to this cartoon and the purpose for which it was included in Esquire, was the immoral connotation to be derived from it? A. Not necessarily, I don't. It could be taken as such.

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Q. Now, Doctor, let's refer to page 65. Here we have the husband dressed in red checkered apron with ruffles on it, leaning part way out of the kitchen door, talking to the milk maid who is dressed in a rather form-revealing slack suit, showing prominent hips and breasts, and she is red-headed, and underneath appears this legend: "Come back later, sweet—my wife hasn't left for the factory yet."

This is apparently what the man leaning out the kitchen door is saying to the milk delivery maid. A. That is right.

Q. And why do you think he wants her to come back later? A. He is having some sort of an affair with her, I suppose. It is the reversal of the old ice man story that went around for years.

2081 Q. And you think there is implied a sexual point or a meeting outside or beyond the knowledge of the wife between the husband and the milk delivery girl? A. I don't know if it is a sexual thing. They may be having some affair. It is the usual story you hear, or little remarks made about the ice man and the milk man and so on having an affair with the housefrau. That is a common type of thing.

Q. I see. And those stories were smutty, weren't they? A. I don't know. They are referred to due to the fact that these affairs go on. I don't know if you would call that smutty or not.

2082 Q. Do you think that those stories such as you advert to are perfectly normal, common stories? A. Lots of people refer to them, very nice normal common people.

Q. And the fact that such trysts or affairs is a common every-day accepted thing in our society? A. A lot of people believe so. For instance, the man who kids his wife about his good-looking stenographer or going back to that nurse story, who kids his wife about the good-looking nurse, or does take his stenographer out unknown to his wife.

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Those things are going on all the time. Some of those affairs lead to sex relations and some don't. An awful lot of people don't really have intercourse, although they go out with each other. They think they are having some sort of an affair, but they are not.

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And, as I said, they may be just petting or a lot of other things.

Q. These incidents are encountered in divorce cases, aren't they? A. Yes.

Q. But you wouldn't say that is the common every-day accepted conduct of the husband and wife, for the husband on the one hand and the wife on the other hand, to have affairs with the milk man or iceman or fuel dealer, or what not? A. It is not a common thing, but it is a common joke?

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Q. A common joke? A. Yes.

Q. By reason of the fact that it has been told so many times you figure that makes it decent? A. It doesn't make it decent or indecent. It just gets into the whole culture and, of course, part of the things that we begin to accept.

Q. Now, page 66. There we have a cartoon showing what has been described, I believe, as a heavy love scene, a light haired girl in a red dress, seated across a man's lap. She has her arms around his neck and he has his arms around her body. Underneath this appears: "It is the only time daughter and her young man have for courting. They both work nights in a war plant."

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Doctor, do you think that scene is a common every-day scene and is accepted in most average homes today? A. I don't know whether it is accepted. A lot of people don't want to see it. They prefer not to see it, but they know it goes on.

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They know boys and girls kiss a lot and hug a lot. The term "petting" again is in our culture. We know it goes on a lot.

Q. And here one of the parents, and the mother at that—who is usually more strict about that—isn't that right?

A. Some mothers are.

Q. And the mother herself is making light of this. Do you think that is a common every-day accepted thing in the light of the mores today? A. A lot of people accept it. A lot of families encourage their girls to have romances. They know that sort of thing goes on. We know petting goes on but we prefer not to see it, perhaps. We try to blind ourselves to these things.

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Q. I see. You say there is no morally objectionable or indecent connotation to be derived from that cartoon? A. Not from my standpoint, no.

Q. Page 84. Here we have a full-page cartoon in colors dealing with the same thing, a heavy love scene and theme, and note, Doctor, the female's mouth appears to be open. A. Yes.

Q. And it looks like a part of the boy's face or mouth is inside the female's. A. Yes.

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Q. The female has her arms around the man who is in a sailor's uniform, and he has his arm around her waist.

Now, around the corner, apparently in the hall, looking through the cased opening, are the parents of this young girl. And underneath is the legend: "Every night he tells her he is sailing tomorrow."

Apparently the mother is telling the father here, and he has somewhat of a look of surprise on his face.

Would you say that this scene depicted in this cartoon is the usually accepted moral standard in the ordinary average

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American home today? A. A lot of people accept it. Again, I would say that a lot of people see that if goes on, they know it goes on, and they accept it.

Again, in certain cultures, no. Certain racial groups wouldn't stand for that. They warn their daughters about it and don't want it to go on. They feel it leads to something and they just won't put up with it.

With other groups, they say: "There it is," and they accept it and know it does go on.

Q. But in most families today that wouldn't be accepted? A. I don't know. A lot of families wouldn't accept it. I don't know whether it is most, a lot would not.

Q. Would you say that that would—and the preceding scene we have called attention to—be in accord with the mores of the day? A. I think so, yes.

Q. As showing the ordinary conduct of young people in the presence of their parents in the average American home? A. Oh, well, you are pinning me down there to what you define as an average American home. In a lot of average American homes this would happen, in others it wouldn't happen. It is according to what the so-called economic life might be. It might happen with some very rich people who would stand for it. Some very poor people might stand for it, some middle class people might stand for it. Now, what is the average class? Are you speaking of the middle class or the poor class, or what?

Now, I don't feel that these youngsters are getting anywhere by their petting and they are not getting a good healthy attitude towards sex questions. On the other hand, it may be saving them from a lot of other stuff, as I said some of them would prefer to pet than go further.

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Q. Well, a lot of times the so-called petting leads rather

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2092 rapidly and inevitably to sex union, doesn't it?" A. Sometimes it does, after a long period of time. I mean, not always. Sometimes the youngsters—for instance, the American girl has a reputation with foreign people that she would pet but she won't go any further, but she certainly likes petting.

Q. Now, when you consider these last two classes we have discussed here in a magazine such as Esquire where sexy matters in the form of pictures like Varga girls and others, and off-color jokes and cartoons are regular features, would you have any different view on this? A. No, I wouldn't.

2093 Q. You would say there is nothing indecent, nothing calculated to shock the average ordinary parent in those scenes? A. It would shock some average ordinary parents and it won't shock others.

Q. Now, Doctor, page 86: "Goldbricking with Esquire", first column at the bottom of the page reads:

"A sergeant was home on emergency furlough to be with his wife who was expecting a baby. One morning on his way to her room he passed the babies' ward and stopped to have a look at the recently arrived children; in one corner he noticed two of them in a serious conversation. He reports it went something like this:

"First: 'I'm a girl, what are you?'

2094 "Second: 'I'm a boy.'

"First: 'You look like a girl to me.'

"Second: 'Well, I'm a boy. Wait till the nurse leaves and I'll show you.'

"The nurse did leave and the boy lifted the covers: 'See, blue booties'".

Do you think, Doctor, that that joke or alleged joke refers to the average person reading it as assuming that that is

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what is meant, that the boy is going to show his sex organ to the girl? A. That is what it led me to believe.

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Q. You say that is in accord with the mores of the day, nothing indecent or morally objectionable about it? A. I don't believe so. Again, that is an old-timer. It has been told a lot and I have heard it a lot in very many places, and it certainly has not affected the morals of the people I have heard tell that same story.

Q. Of course, the joke is over-distorted, isn't it? This is apparently the nursery of a hospital and newly arrived babies are talking to each other. A. That is right.

Q. So it is a sort of a strained situation to arrive at the point of the joke and that is the displaying of the sex organs, isn't it? Do you think that that is entirely decent and moral and not objectionable in a thing like this? A. For what?

2096

Q. For this. A. For this story?

Q. Yes. A. I think it is all right. I don't think it is indecent.

Q. You don't think it is objectionable at all? A. No.

Q. Now, page 87, the same "Goldbricking with Esquire", at the bottom of the third column: "She: 'Would you like to see where I was operated on for appendicitis?'"

"He: 'No, I hate hospitals.'"

That is dealing with the same subject matter, isn't it, Doctor? A. Somewhat. I mean, it is again the same type of a joke.

2097

Q. Do you think it is a perfectly accepted thing in ordinary every day normal society for a young girl to indicate or a man to think that she is indicating that she wants to display her body to him? A. This type of thing would happen in terms of the sense of humor. You see, there are a lot of youngsters that tell these things, and they are all right.

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2098 they are perfectly decent youngsters. They just happen to have a little Rabelaisian sense in their souls, or something.

Q. On page 102. Here we have a color cartoon, full page size, showing a man on a beach with tattered shorts and nothing else, a tropical scene in the background, apparently a small tropic island, and lying on the beach with her legs cocked up, one leg across the other partly, a young lady with a brassiere and panties. Under this appears:

"Ain't it a damn shame? Plenty of water on this island, plenty of food, and now I get hallucinations."

What do you think his hallucinations are about? A. About finding a girl on the beach.

Q. Referring to food and water and the other desire, desire of man, is that referred to here as hallucinations? A. I don't think so. I didn't think of it in those terms. You are talking about self-preservation, that we have various instincts, I suppose. Self-preservation of the sex instinct.

Q. That is what I am referring to. A. I wouldn't take it that way.

Q. You wouldn't so understand it? A. No. It means that he wants a woman and that is a rather normal and natural thing.

Q. You say this cartoon would mean that he wants a woman? A. I don't know whether it would or not, but he is having hallucinations, and we always feel that hallucinations perhaps show your desires.

Q. So it might be that he wants a woman? A. Yes.

Q. And if that were so, would you see anything morally objectionable or indecent in that connotation? A. No, I wouldn't.

Q. Now, referring to the October issue of Esquire, Doctor, there is on page 10, column 3, a reproduction of what pur-

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ports to be a letter headed "The case of the classy chassis".
which reads:

2101

"As a member of the armed forces and away from home, I, too, am an ardent admirer of a classy 'chassis' such as presented in Esquire by the talented Varga."

What does he mean by chassis there, Doctor? A. The body.

Q. The body? A. Yes.

Q. (Continuing): "My passion for Varga girls goes almost to the extreme; they occupy my walls, ceilings, and even space on my luggage is given up to these shapely damsels."

"However, I am inclined to sympathize with the mysterious miss whose 'chassis' appears on page 10 of the August '43 issue. Though my liking for the Varga wenches is supreme I would not replace the chassis on page 10 for a Varga dame. It is too bad you could not provide a larger of such photos so that we, who appreciate shapely forms, could pin up. A spot has been reserved on my wall to deposit such a dish. Why not give us the face?"

2102

Do you agree with the reference made in this letter to the Varga girl pictures as the Varga wenches? A. I never thought of them in those terms, no.

Q. What is a wench? A. A wench?

Q. Yes. A. I don't know the real definition of wench. We refer to them quite often in a rather disparaging manner. I don't believe it necessarily has any sex connotation, if that is what you mean.

2103

Q. You don't think ordinarily when a woman is referred to as a wench that there is an immoral thought to be conveyed? A. No, I don't.

Q. By that term? A. No.

Q. He says: "We who appreciate shapely forms", and he refers to such a dish and he wants to put it up on his wall. Referring to the form of a woman as dish indicates that

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2104 he wants to enjoy it, doesn't he? A. Not necessarily. Again it is a slang expression.

Q. It is a slimy expression? A. Slang.

Q. Slang? A. Yes.

Q. You speak of food as a dish, don't you? Various articles of food as a dish? A. Yes.

Q. When you speak of a woman as a dish what do you have in mind there? A. What do I have in mind or what do the boys have in mind? Well, I think just as I expressed it here, I mean, here is a boy who is rather inclined to like shapely women and he enjoys having the physique part of them stand out or their physique stand out, and there it is.

2105 Q. Would you say that the writer of this letter indicates by his expression and phrases therein that he gets an extreme kick out of the Varga girl? A. Yes. He may get an extreme kick. According again to how you define the extreme kick. He gets quite a kick out of it, he enjoys it.

Q. He says: "Though my liking for the Varga wenches is supreme". Do you think he is referring to a perfectly normal and average reaction to the Varga pictures? A. Oh, I think so, for certain people.

2106 Q. Now, Doctor, coming to page 37. Here we have in the lower right-hand corner the man on the beach with trousers on only, and an identification tag around his neck, and a hula girl tattooed on his arm, and, by the lines adjacent to his biceps, indicating that he is flexing his biceps, to make the figure tattooed on his biceps move.

A. That is right.

Q. And a native girl in what appears to be a grass skirt and nothing more on is gazing at the scene depicted on the man's biceps. Notice the way this girl's hair is done.

A. Yes.

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Q. Her features might indicate that she is an American girl so far as her features and hair are concerned; isn't that right? A. I don't know. I don't know anything about how the natives wear their hair.

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Q. A tropical scene maybe in Polynesia. Would you say there is anything objectionable, immoral or indecent or having any sexual connotation to be derived from that picture? A. No.

Q. One appearing in a magazine like Esquire? A. No.

Q. Page 38. Here we come to the article: "Wise Men Pick Pyknic Girls". How many times did you read this, Doctor? A. I read it once.

2108

Q. You are familiar with this scientist Kretschmer? A. Kretschmer, yes.

Q. K-r-e-t-s-c-h-m-e-r? A. That is right.

Q. From whom the article herein purports to be derived? A. Yes.

Q. Would you agree, Doctor, with the generalizations with respect to the women described as types in this article reads something like the generalization to be found in the so-called horoscope? A. In a horoscope?

Q. Yes. A. No, I wouldn't agree with that.

Q. Have you ever read a horoscope, Doctor? A. No. Years ago, I guess, but I haven't lately.

2109

Q. It has been so long? A. Yes.

Q. Since that you have forgotten about it? A. Yes.

Q. If Dr. Tillotson did testify that Kretschmer had been accused of getting some of his verbiage from horoscopes, you would disagree with him, would you? A. Would I disagree?

Q. Yes. A. I think so. At least, I don't know about it. The basis of Kretschmer's work is that he tried to determine two types of people, rather four types of people, in

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terms of mental illness, and he described the Pyknic type. That the Pyknic physique showed that these individuals were prone to come down with manic pressure types of insanity when they became ill. The short, sort of square-faced people with the shield-like or round face and short neck, thick body, short arms, and so on. That when they became ill they went into a certain disorder which had to do with a disturbance. These people either became very, very sleepy or very, very stupid. Very vivacious type of individuals and they are very attractive individuals when they come out of their illnesses. Those are the different types.

2111

Q. Did he recommend them as good life companions for marriage? A. I can't recall seeing that. His work is purely on the basis of trying to say that if you have this type of build you will have a manic depressive type of insanity if you become ill.

If you are a leptosome, a flat-chested individual with a long neck and sort of egg-shaped face, then you will be a schizophrenic.

2112

Then, he had two other classes, a dysplastic, which threw everything out of the ordinary—one was too tall or one thing or another—and the other was the asthenic build, and he went on to show that these two types when they became ill became definitely ill and they did have a certain given personality.

Q. Doctor, when you read this article, of course you drew on your store of knowledge of Kretschmer and his work, didn't you? A. Yes.

Q. And would you say that that prior knowledge of that work prevented you from appraising this article as an ordinary, average normal individual every day would appraise it, who reads it in "Esquire"? A. Well, I know more about it than the ordinary individual.

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Q. It would naturally have a different effect on you, wouldn't it, Doctor? A. Oh yes, sure.

Q. Now, page 44, Doctor, here we have the Varga girl in the well-known recumbent Varga pose, portrayed in what approximates natural colors, red hair, possibly hazel eyes, entitled "Torches at Midnight."

Doctor, what would you say this garment is that this model has on? A. I really don't know. I suppose it is one of those under things that women wear.

Q. Something like a teddy? A. Yes.

Q. Quite thin, you can see the ribs through it and the umbilicus? A. I can see the ribs. I don't know whether I see the umbilicus or not.

Q. You say you can't see the umbilicus or you are not sure? A. No, I am not sure.

Q. Just turn to the white of the fold where it folds under the page. A. There is a shading there. It is not a very accurate looking umbilicus.

Q. You see the tip of the nipple of the right breast? A. I do. I wondered why he didn't put one on the other.

Q. Maybe he thought he could get by with the one and not the other, Doctor. A. Maybe.

Q. Doctor, would you say that this picture and this pose in a magazine such as this, would be calculated to sexually stimulate young men to whose attention it came? A. It might slightly sexually stimulate them, yes. Again, it varies with the individual. A lot of them might like it and others might be sexually stimulated by it.

Q. Doctor, the average boy would not like to see his sister or his mother in such a costume, would he? A. Oh, I don't know. I have been thinking about your statement along that line and I am not so sure about that.

It is the custom in homes for women not to appear before

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their children in this kind of thing and for brothers and sisters not to appear that way.

Q. Doctor, do you say this would or might be sexually stimulating to the average normal individual? A. Some of them; others not at all.

Q. Now, refer to the cartoon on page 49. Here we have a reversal of the milk delivery. A. That is right.

Q. And the henpecked or home body husband motif, with the big brawny, red-headed man seated on the couch—he is in overalls, apparently, and the young woman seated in his lap with her arm around his neck and the man with—would you say that is a satisfied look on his face? A. I think it caricatures that, yes.

Q. And you see the woman's breasts are rather over-emphasized? A. They are prominent.

Q. And in front of them is a coffee table with a cocktail shaker and two glasses, indicating they had been imbibing intoxicants? A. Yes.

Q. And standing to one side is a man in topcoat, spats, hat, muffler around his neck, cane in his hand, glaring at the scene. And under this appears this legend: "Hello, dear —this is the gentleman who sells us our fuel oil."

Do you think there is any morally objectionable or indecent connotation to be attached to this cartoon, Doctor? A. No, I don't, in its—

Q. Is it an every-day customary happening for a wife to be caught in the embrace of a workman or service man after they have both had drinks, by the husband? A. No.

Q. You would say that this situation or scene depicted here is not a common, ordinary every-day scene, accepted in the mores of the day? A. That is right. This is a joke. This is again a joke that has been going on for a long time.

Q. Page 56-128, Doctor.

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Did you read that story, the "Portrait Above the Fire-place"? A. Yes, I did.

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Q. How many times did you read that? A. Twice.

Q. And this tells a story of a man who did not know his mother. A. Yes.

Q. Who found a picture of a lady, or a woman, framed, and all, and he bought the picture and cleaned it up and hung it in his room and looked upon it as an ideal, and as his mother, and he so comported himself with respect to it, and in fact, told his friends that this was a picture of his mother.

And on one occasion a friend of his, after he had attained some success in life, a friend of his in his cups, tells John, the hero, this:

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"Of course, you don't know, John. I hate to think of anyone ever laughing at you. But that is a portrait of Mabel Haynes. She was the madam of the highest class house in the old district."

Does that mean to you, Doctor, that this picture was the portrait of a bawdy house keeper? A. Yes.

Q. In the red light district? A. Yes.

Q. And do you say that such a story as this in such a magazine as this would not have a filthy or indecent connotation? A. I don't believe so. It is a story which may have been an actual fact. The orphan child is often looking for his mother, has a desire to have one. This is a story that may have happened; I don't know.

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Q. And, Doctor, even though it did happen, even though the facts were absolutely true, would that make the recitals in this and the point of the story a common, every-day accepted situation in society? A. No, but on the other hand, this may be a very good story. I kind of think it is a good story, well written and well told, showing again the life of the individual.

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2122 Q. From a psychiatrist's standpoint, does it have any moral or illustrate any moral? A. No. About the only thing I can think of is that even a prostitute may answer a good purpose once in a while.

Q. You wouldn't say this was a good example of the so-called Oedipus complex? A. No.

Q. The Oedipus complex has reference, does it not, or is applied largely to the female in the absence of external organs? Isn't that a fact? A. What is that?

Q. Isn't that associated with that? A. The Oedipus complex?

2123 Q. Yes. A. No. What the Oedipus complex means is that all of us are certain to have a certain love attachment to our mothers and that is something that is very difficult for men to throw off.

In his psychology he is sort of bounded by that all through his life. In some senses it relates to an almost sexual desire for that individual. A child is supposed to be broken free of that by the time it reaches—I have forgotten the exact age, but it is four or something of that nature.

Q. It is an attachment to the parent of the opposite sex of the child? A. Yes. They used the Electra complex where the girl is attached to the father. The psycho-analytical school is a school that brought that out and uses it in their treatment of cases.

2124 Q. And you wouldn't say that this story is a good illustration of that type of complex? A. I can't quite see it that way. I don't see him in any way in terms of any sex relationship with his mother. Here is a mother who has had a great effect on this man's life. He can always look up to her and he is being helped in his life by this symbol, although it is a picture. And then it turns out to be a prostitute.

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Q. And you say there is nothing indecent or filthy or shocking to morals in that sort of situation? A. Not to me, no.

Q. Now, Doctor, refer to the November picture, the Varga girl picture and verse on page 46. There we have a girl seated cross-legged, and what is she dressed in, Doctor? Do you know what that garment is? A. It is one of those corset affairs, I suppose—Spencer corset or something.

Q. A Spencer corset. Is that a medical corset? A. I really don't know.

Q. You wouldn't know whether this is a girdle or a corset? A. No, I would not.

Q. Note the startled expression on her face and the verse: "Virtue triumphs," the verse reading:

"The look of alarm
 On this bundle of charm
 May set up some foolish illusion.
 Her state of attire
 May also inspire
 Some rather ignoble conclusions.
 Perhaps you've surmised
 That the gal's been surprised
 By a villainous sort of a louse—
 But, brother, you're wrong,
 You've been wrong right along—
 It wasn't a wolf . . . but a mouse!"

A. Yes.

Q. Doctor, would you say that this picture of this girl in what purports to be lifelike colors, coupled with her scanty attire and the expression on her face, and the wording of the verse, would be calculated to sexually stimulate readers of this magazine? A. It might; I don't know.

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Q. The verse calls attention to her scanty attire? A. That is right, but it isn't always scanty attire or bosoms or what not—some people go crazy about hair.

Q. But this is pointing to her scanty attire and the fact that she has only one garment on her body— A. That is right.

Q. And intimates you are to gather, or the reader is to gather, when it gets to the last three words, that she is being spied upon by a wolf or a male individual who wants to make use of her. Do you say that is right? A. I don't know whether you want to call it "make use of her." You use terms that I wouldn't quite use.

2129

Q. Well, you change them if they don't suit you, Doctor. I don't want to put words in your mouth. I wouldn't do that. A. It leads you to believe that something is going to happen, and all of a sudden you are disappointed. But I don't believe that just the fact that reference is made to possibilities means that it is obscene or immoral.

Q. This model is what you might call a fulsome model, fully developed breasts and legs, is she not? A. Yes.

Q. You don't think that readers of this magazine, or some readers of it, might get a special kick out of looking at that and reading that verse? A. Some of them might. An awful lot wouldn't. I think they would take it for what it is worth and let it go at that.

Q. And to you, Doctor, it is not worth very much, is it,—I mean sexually? A. It wouldn't bother me.

Q. It wouldn't bother you? A. No.

Q. Look at page 52. Here we have a full sized, full paged cartoon, in colors, showing a sheik-like person with three females, rather scantily clad on the upper parts of their bodies, with loose jackets which do not fully cover the breasts of the model to the right, and trousers that are

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sheer—their legs can be seen through them—and the man in the foreground is talking to two girls beside him, and in the background, with their backs turned, going away, are a moorish gentleman—a man with his arms about similarly clad girls—and underneath is the legend—"Such a neighbor, always borrowing."

2131

Doctor, do you think that the idea sought to be conveyed here is that one sheik has borrowed a couple of slave girls for use sexually from this sheik who is talking in the foreground? A. It may do that:

Q. Now, look at the hair styles of these five women models in this picture. Do you see that they are very much different to the hair styles you see every day on American girls?

2132

A. No, I see all kinds of hair styles.

Q. Now, these models, the two in the background, are red-headed, the one in the foreground is red-headed, the one nearest the sheik in the foreground appears to be auburn or dark haired, and the one to the right appears to be a blonde. Would you say that those are the types of women found in the Near East? A. I don't know. I don't know enough about physical anthropology to tell you that they may be, or the social anthropology. They may bring these people in and import them for all I know. I don't know.

Q. But, so far as you know, the heads of the models might be American girls? A. Well, it might be.

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Q. From the appearance of the hair, the color, the hair-do, and the expression and so forth, is that right? A. Or they might be influenced by the American girl in appearance and dress and so on.

Q. Doctor, would you say there is any sexual connotation to be derived from this cartoon when found in a magazine such as Esquire? A. I suppose there is some sex connotation, yes. You see a lot of people don't carry the joke any

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farther than that; they don't allow their mind to run riot and get to thinking about it, or the details about it. It is just the fact that you see these things and you think it is amusing and you let it go at that.

Q. In this country women are not ordinarily borrowed, are they, Doctor? A. No. In that country they may be.

Q. But this magazine is an American magazine? A. That is right.

Q. Circulating in the U. S. A.? A. That is right.

Q. Don't you think that this cartoon is designed to convey just that inference and connotation? A. That they are being borrowed?

Q. Yes, for sexual purposes. A. Yes, I suppose so.

Q. Now, Doctor, let us refer to page 60. There we have, on page 60, the full page color photograph, and on page 61 the legend:

"The Esquire Canteen. The girls from the Folies Bergere." And the first sentence under it reads: "Here are five perfectly good reasons why service men and mere civilians pause for laughs, libation, and libido at the Folies Bergere."

Now what does "libido" mean here, Doctor? A. Well, I suppose, again going back to my original—

Q. Your original definition of it? A. My original definition of it. I don't know how it is used in this particular circle, the stage play and so on. I don't know.

Q. You don't know? A. Whether that means sex alone or whether it is in a broad sense. For instance, in one of these magazines someone used the word "Amgot". I don't know whether he knew what he meant.

Q. Doctor, that language I called your attention to, in connection with the scanty costumes and the models and the color photograph on the opposite page, do you think the readers of this magazine would get any sexual stimulation

2135

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from those things? A. The same as they would get, the men who go to the shows and the Follies and Rose's girls and so on. A man always wants to go to these things; he does get some stimulation. Whether he gets anything after that, I don't know; it is a stimulation.

2137

Q. Now, Doctor, referring to the cartoon on page 66. Here we have at the top of the page, in color, a cartoon showing two soldiers, apparently American soldiers, with guns on the ground, their hands in the air, broad smiles on their faces, surrounded by five females, possibly South Sea Islanders, dressed in some covering merely around the hips, and underneath it says: "It's no use, Sarge, we're outnumbered—Yippppeeee!"

2138

What would you say that these soldiers are delighted at? Would you say these soldiers are delighted at being outnumbered by the five buxom, rather attractive looking almost nude native women? A. Yes. They certainly have an expression of joy. I would say yes, they are very delighted.

Q. Would you say that that implies that they anticipate rather anxiously some sexual enjoyment of these? A. No, I don't.

Q. —of these native girls? A. No, I don't.

Q. Wouldn't get anything of that sort from it? A. No, not necessarily.

2139

Q. I don't mean not necessarily, Doctor, but would you get that? A. If I wanted to let my imagination go on and on, perhaps yes, but after all they haven't seen anything of females and there are a lot of other relations that man has with woman that is not sexual. His eye glistens and so forth, but it doesn't imply intercourse. Whether it is a South Sea Island girl or whatever it is,

Q. These girls are not very dark, are they? They don't

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have kinky hair. A. Well, now, I am not sure about that. There is one here that looks a little bit kinky here in the corner.

Q. Look at the girl in the foreground, at the right, with her back to us. A. Yes.

Q. She apparently has straight hair, and also the girl whose head is seen over her, isn't that true? A. Perhaps.

Q. In other words, so far as the hair styles of these models are concerned they are not very different from those you see ordinarily on American women, are they? A. Well, this one looks different than the other ones you have been citing all along. It is a little different type of hair cut.

2141 Q. Take the woman who is facing here (indicating).
A. Yes.

Q. She doesn't look like a Polynesian, does she? A. I don't know. I don't know anything about the Polynesians. I should say not, I don't know.

Q. Now you say there is no improper, immoral, or indecent sexual connotation to be derived— A. No.

Q. —from this cartoon? A. No.

2142 Q. Look at the cartoon on the opposite page, page 67. Here we have three soldiers apparently smoking bubble or water pipes. The servant girl has a red cap on her head, very greatly over-sized breasts, a diaphanous costume that reveals her entire body, in the center of the picture, and underneath it the legend: "At the U.S.O. in New York they just gave us cigarettes."

Do you think that any sexual connotation is to be derived from this cartoon? A. I think there is a double meaning there. You can see what they are trying to say.

Q. But if we accept the off-color meaning, would you say there is nothing immoral or objectionably immoral, or indecent in that picture? A. I would.

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Q. Now look at page 73. Here we have the color photograph of the girl reclining and she is covered with a very sheer silk-like or wet material which clings to her body. Would you say, Doctor, that it is fair to assume that this model has nothing on underneath this silk covering thrown loosely over her body? A. So far as I know I suppose she has.

2143

Q. And the umbilicus is apparent in this? A. Not very prominent.

Q. You can see where it is? A. Yes, I think so.

Q. Would you say that the shadow down near the pubic region is overly dark? A. No, I wouldn't.

2144

Q. Would you say it was fair to assume that this model was posed in this way to facilitate the mental undressing of her by the readers of Esquire? A. No, I wouldn't.

Q. You think there is no sex stimulation to be derived by any of the readers of Esquire by looking at this picture?

A. Not necessarily so, no. It might be.

Q. You think there is nothing immoral about it? A. A rather nice picture, as a matter of fact, the way I reacted to it.

Q. Nothing immoral, indecent, or objectionable in it?

A. No.

Q. Page 77, we have the article "First Nights and Passing Judgments." Notice, Doctor, a reference in paragraph 4 to "an old-time St. Louis sporting house."

2145

No doubt about what that means, is there? A. No.

Q. Now paragraph 10: "Young floozie characters wearing short skirts that tightly embrace their hinterparts and who interpret their roles by crossing their legs three inches above the knees and dangling red handbags big enough to hold the books of the Corn Exchange Bank."

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Paragraph fifteen, the reference to "a bawdy house." No doubt about what that means?

Paragraph twenty-one, the following:

"Den don't gimme any a dat crap! What da hell did yuh tink I wuz gonna do? Hang around dis dump waitin' fer Santa Claus tuh take care a me, fer Chris' sake. Looka you! What a yuh got? Six years yuh went tuh college an' what da hell a yuh got? A lousy handout a thoity bucks a week! Not fer me! Yeah, I got mine, but I took it!"

Q. How many times did you read this article, Doctor? A. I read this twice. I beg your pardon.

Q. Or did you read the whole article? A. Yes, I read the whole article.

Q. How many times did you read it, did you say? A. I read it twice.

Q. Do you testify that there is no objectionable or indecent language in this article? A. If you take it out of its contents the way you have, that is one thing. When you think of it in terms of the whole article, then it is a good article, in my mind. Now we put an emphasis—I don't know whether you are allowed to say "Jesus Christ" in a magazine or not, I don't know, whether it is permissible or not.

2148 Q. How about this twenty-one: "Den don't gimme any a dat crap."

Do you think that is a decent, everyday word? A. Well, crap has lost its original meaning.

Q. It used to be considered nasty, didn't it? A. It used to be considered nasty, but it has lost its meaning.

Q. You mean it has lost it in New England or all over? A. Oh, I wish I had one of Mencken's dictionaries here. I imagine it has lost it all over. I know it has in New England.

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Q. You say there is nothing objectionable or filthy or indecent in this article? A. No. 2149

Q. Page 83. Here we have a cartoon in the upper left-hand corner in color showing two females in the foreground, one with her mouth wide open: apparently talking to the female seated, through the door in the background you see people dancing, and underneath: "My date's at the awkward age—all hands and no dough."

Do you think by the reference to "all hands" this talking female in this cartoon means to indicate that her date has done some exploring or is inclined to explore with his hands various parts of her body? A. I should think that is what it implies. 2150

Q. Would you say that is a commonly accepted topic of conversation in the average American society? A. A lot of girls have to fight that off. That is a practice that a lot of the kids have. I mean, it is according to how far they go. Some kids just let them maul them a little bit, but the girls don't like it, but it happens.

Q. You don't think there is anything indecent in making that a subject of a cartoon in an American magazine such as this? A. No, I don't think so.

Q. Nothing objectionable? A. No.

Q. Either moral or immoral? A. No.

Q. Page 89, the color photograph of "Stage Door Esquire." Apparently a scene in colors from a show or circus, the clown in the background and in the lower right-hand corner a scantily clad female. Do you think the picture of that woman would be calculated to stimulate sexual desires in the readers of Esquire? A. I don't think it was calculated to do that at all, no. 2151

Q. You don't think it would have that effect? A. Some people, again, might be stimulated by that.

Clements C. Fry—for Respondent—Cross.

2152

Q. Page 94, "Goldbricking With Esquire."

We have there the first item, fourth column, down at the bottom of the page:

"The corporal was going home on a furlough and was lucky enough to have a Pullman reservation. When he got ready to retire and pulled back the curtain to climb in his berth, he was astonished to find two luscious blondes reposing there! He carefully checked his ticket, reservation, and berth number to make sure he wasn't wrong, then said:

"I'm deeply sorry ladies, I'm a married man, a man of respect and standing in my community. I cannot afford to have a breath of scandal touch me, I'm sorry, one of you girls will have to leave."

2153

Doctor, do you think that portrays the ordinary moral conduct of the ordinary individual reflected in that joke?

A. As to his personal morals?

Q. Yes. A. No. I think, it seems to me, it is one of those jokes, again. Here is something that is a little absurd about it. Here is a married man and he starts off to say it looks as if he is going to kick one of them out, and then he says, "One of you gets out." It is a typical risqué story type.

Q. It is a risqué story? A. Yes.

2154

Q. It implies that he is going to get into the Pullman berth with the remaining luscious blonde, doesn't it? A. That, I don't think, is the important part of it. I think the humor is the important part of it. You are led up to one thing and suddenly you find another. It is more or less typical humor.

Q. Although you say it is a risqué joke you think it is perfectly proper and moral— A. Yes.

Q. —and perfectly decent? A. Yes.

Q. In a magazine of this sort? A. Yes.

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Q. Now, item 15, which is the next to the last item in the last column of page 94:

2155

"He: I see your husband has been promoted to a master sergeant. I suppose he's brilliant and knows everything."

"She: Don't fool yourself. He doesn't suspect a thing."

Do you think that applies to any not-to-be-talked-of affair between the He and the She; or is that an extra-marital affair? A. No. Again that is one of those stories. Apparently the soldiers like these stories; these fellows who are doing all this work enjoy it.

Q. You think they get some sex stimulation by stories of this sort? A. No, I don't think these stories really give people sex stimulation at all. I think they give a sense of humor. You can't get very sex stimulated from laughing. I don't believe. Sex is a serious thing with most of those fellows.

2156

Q. You think you can't whet the sexual appetite by ribald jokes? A. Not this type of thing, I don't believe.

Q. Now, Doctor, referring to item 24. This is the one at the top of column two, page 95:

"Home on furlough the soldier was surveying his sweetie whom he hadn't seen in months.

"'Slimmer; aren't you?' he asked?

"'Yes,' she replied, 'I've lost so much weight you can count my ribs.'

2157

"'Where,' asked the G.I., with a gleam in his eye, 'do I start?'"

Does that imply the manual handling of the body of this girl by this soldier home on furlough? A. It implies some petting, yes. To begin with, these are stories that the boys seem to like.

Q. Well, why do they like the type of story particularly, dealing with sex and being risque? A. They always have. It has been handed down for years and years.

Clements C. Fry—for Respondent—Cross.

2158 Q. You think that makes them any different from a morally decent— A. It is according to how you view them.

Q. —point of view? A. It is according to how one wants to view them. There are a lot of people, as I said, that don't like to hear these stories. To people who like these stories, it doesn't bother them very much, it doesn't stimulate them, as far as I can see. They don't go off in a corner and tell these things; they seem to enjoy them and let it go at that. A lot of nice people tell these stories.

Q. Now item 27, the last item in the column you are looking at:

2159 "The beautiful Army hostess, newly arrived in camp, thought she would take a nude dip in the clear blue lake while the men were out on drill and no one was nearby. It so happened that a rookie K.P. was sent down to the lake for a bucket of water and, seeing her pink clothes on the bank, sat down to watch. The beautiful Army hostess remained submerged up to her neck until she could no longer stand the chilling water, whereupon she scampered up the bank and found an old dishpan half buried in the mud. Hurriedly digging the pan out she held it in front of her like a shield and came ashore.

2160 "You wouldn't have such a look on your face if you knew what I'm thinking", she said.

"Oh, I know what you're thinking of all right," said the K.P. "you're thinking that pan's got a bottom in it."

What portion of the anatomy of this nude female does the joke point to, Doctor? A. Most likely to the mons pubis, and I don't know whether he could see the vagina. After all, in that position it is pretty hard to see.

Q. But it points to her pubic area, does it not, Doctor? A. Yes.

Clements C. Fry—for Respondent—Cross.

Q. That she thought she had covered? A. That is right.

Q. You think that is a perfectly proper subject for conversation in polite society today? A. Polite society tells those stories.

2161

Q. You think there is nothing objectionable from a moral standpoint or moral decency in connection with something like that? A. No, I don't. I mean it is in your mores, it is in your culture. It is here.

Q. Now item 28, the one that I just finished:

"Have a good time at the party, daughter, dear, and be a good girl."

"Make up your mind, Mother."

2162

Does that infer or imply that the girl might not have a good time unless she was involved in a sexual way, possibly?

A. It may well be in a petting way, if you want to call that sex, sure.

Q. Now, the one down below, the next to the last one in that column:

"Buck Private: I'm afraid we can't have much fun tonight. All I have left of my pay is some small change."

"Sweet Young Thing: Well, how much do you think it takes to send my kid brother to the movies—a five dollar bill?"

You think that has an objectionable or indecent connotation? A. No. That is the old story of the young brother holding up the boy or lover while he does a little petting, or something like that, courting, or whatever you want to call it.

2163

Q. The one underneath that:

"'Pardon me, Miss,' said the sentry, 'but it's against regulations to swim in this lake.'

"'Well, for heaven's sake,' exclaimed the maiden, 'why didn't you tell me before I undressed?'

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2164

"It ain't against regulations to undress, lady."

Would you say there is anything morally objectionable or indecent in that alleged joke? A. No, I wouldn't.

Q. It implies that the young lady undressed before the sentry? A. That is right, it is humor.

Q. You think it is perfectly proper, that sort of an implication? A. Oh, I think it is in a joke.

Q. But you wouldn't go in for nudity? A. No, I am not built that way. I would hate to, at this age, go in for it.

Q. You wouldn't show off so well at a nudist camp? A. That is right.

2165

Q. Now, referring to the cartoon, last column on page 95, the picture of the soldiers in the camouflaged tree in the background, and in the foreground some young ladies in the water, undressed, with the title underneath:

"You're sure there are no soldiers around here?"

Does that convey any immoral, objectionable, or indecent thoughts, Doctor? A. No. Again, it seems to me all these things show the type of humor that our American soldiers are going in for.

Q. But this Esquire circulates all over the United States, doesn't it, Doctor? A. That is right.

2166

Q. Some seven hundred thousand copies are sold on newsstands and are passing through the mails. It doesn't necessarily go to soldiers? A. No.

Q. They wouldn't print jokes in here that were only interesting to soldiers, would they? A. No, but it might be interesting to a lot of us to find out what type of humor soldiers are accustomed to. For instance, it is common for the soldier from New Zealand to write a letter asking to send him some stories; they have run out of stories.

Q. You don't think they would put anything in here that the average ordinary reader of Esquire would get a sexual connotation from, do you? A. No, I don't think so.

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Q. Now, the one underneath that:

"A beautiful young lady went for a swim in a secluded spot but forgot to take a towel. She had a swell swim, then came out on the bank and was allowing nature's balmy breezes to dry her when she heard a rustling in some nearby bushes." 2167

'Who's there,' she cried in alarm.

'It's Willie,' answered a rather high-pitched voice.

'How old are you, Willie?,' asked the girl.

The answer came quickly, '79, darn it.'".

Do you think there is any objectionable, immoral or indecent sexual connotation to be applied to that? A. Again it applies to the stories. I don't think so. It is just one of the typical stories. 2168

Q. I see, Doctor. Now, Doctor, have you defined for us or will you define or undertake to define for us the normal mind? A. I wouldn't attempt it, no. I just wouldn't attempt to define the normal mind.

Q. You wouldn't attempt to do that? A. No, I wouldn't. I don't think anyone can do it, any one man. It is according to what you want to call mind.

Q. Well, let us see, Doctor. Would you say that is the normal average man, woman or child who is allowed to walk the streets and buy magazines from the newsstand?

A. Are they normal?

Q. I say, would it be fair to say that that is the type of person meant by the normal mind? A. I don't know. I don't think you can define normal. There are too many psychiatrists and psychologists and everybody else spending time trying to define what normal is, and I am not going to try to define it in a few words. I never came out with it.

Q. You can't divide the population numerically into normal and subnormal on mental status? A. From the standpoint of their personality I, Q.?

2169

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2170

Q. Their mental status, as to the effect this material would have on them we are dealing with here? A. That is not clear to me, it is a confusing term first. You see, it connotes to me the question of whether you are thinking of the term of their I. Q. or their personality or what.

Q. About how they react to sexual stimulation? A. I think people vary and also a lot.

Q. It is hard to say what the normal is in that regard, isn't it? A. Yes, it is hard because some people are stimulated from a sex standpoint by perfume; some through the various senses, it may be through smell, it may be through voice, it may be just through their own thoughts.

2171

Q. Doctor, have you attempted to classify the several hundred thousand readers of "Esquire" as normal, subnormal or abnormal? A. No, I have never done that.

Q. You have not had an opportunity to examine them, have you? A. No, I should say not.

Q. Now, have we been talking about the normal individual and his reactions to these things here, Doctor? A. Have we?

Q. Yes. A. I assumed we were talking about the average normal individual.

2172

Q. Now, what is this average normal individual—can you define him—so far as he may be affected by sexual stimuli such as are found in Esquire? A. Well, I don't think the question of sexual stimulation has anything to do with whether a person is normal or abnormal.

For instance, a great many people who have no sex drive at all, could look through anything and yet they are so-called normal people except in this one phase, that they have no sex drive because of glandular disturbance or so on; and they may have no sex stimulation because they have very strong religious convictions or what not, or they may be dominated by parents who look upon sex as a very terrible thing. They are afraid of it.

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Q. And it may depend largely upon the age of the individual, whether his age or her age—the age and sex of the individual—as to what, if any, sex stimulation he or she will get— A. From anything.

2173

Q. From matter of this sort? A. From anything.

Q. Including matter of this sort? A. Yes, including matter of this sort. There are so many variables.

Q. As a person grows older his or her sex urge diminishes, doesn't it, with his body processes? A. It is supposed to. A great many people get more active. They hate to lose their former activities and they think they are more active. They think more about sex.

2174

Q. But there ordinarily is a slackening off, a diminishing of the sexual activity of the individual due to the age? A. That is right.

Q. Now, in answering the questions of counsel on direct with respect to this matter in Esquire, what age person did you have in mind? A. In answering?

Q. Yes; A. All through here?

Q. Yes. A. I was thinking mostly of the college youth and the pre-adolescent group and going over into those individuals who were—my patients run up to about 38 or so—the college group, graduate students.

I also see a lot of professors and their wives and relatives and so on. But in the main I was thinking of the adolescent and college group, including the professional schools.

2175

Q. I see. Doctor, are you stimulated in sex desires by things you see pictured, pictures and matter in print? A. I think that is a little personal.

Chairman Myers: I think so, too.

Mr. Hassell: I wanted to inquire whether there

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2176

is any difference between his view of this matter personally, now, and when he was a young man.

The Witness: I still feel that is personal.

Mr. Hassell: The other witness answered that.

Chairman Myers: I know he did and I thought it was impudent at that time.

Mr. Hassell: I submit it is rather difficult here—I would argue that it is rather difficult—for a witness such as this gentleman and the others who preceded him, to separate themselves entirely from their own personality, from their age and time of life, their environment and education, and all their experiences, and I think that is a matter that is entirely proper for this Board to inquire into.

The Witness: I object to having my personal life investigated from that standpoint.

Chairman Myers: And the objection will be sustained.

By Mr. Hassell:

Q. Being mindful of the fact that Esquire is humorous and is written in down-to-earth plain language so that the ordinary person, undeveloped as to education and character, can read it and understand it, that it is profusely illustrated by cartoons and photographs, and that it readily comes into the hands of the immature, do you think it meets a standard of morality that society has a right to demand of publications reaching such readers? A. Yes, I do.

Q. Doctor, do you disseminate Esquire among the patients that you come in contact with? A. No, I don't object to their reading it. If I know about it, I don't object to it.

Q. Do you bring it to the attention of the students in the

2178

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college that you are connected with? A. No, but I would find certain articles—perhaps certain articles in here I would bring to the attention of certain students if they were interested in sociological factors and wanted to know about certain things.

2179

Q. But you have never brought it to the attention of the students? A. No.

Q. Do you keep this magazine in your home? A. I happen to have a couple in my home. There were a couple of good articles years ago.

Q. You are not a subscriber to it? A. No.

Q. You are not an ordinary reader of it, are you? A. No. I have gotten it now and then.

2180

Q. Ordinarily, I understand, you don't advise patients who come to you for advice as a psychiatrist to read Esquire? A. No; I don't tell them not to, either. I have never seen it have any effect on any of my patients, so far as I know.

Q. As a matter of fact, have you ever questioned your patients as to whether they have been affected by reading Esquire, Doctor? A. I never have. I never even thought of that possibility.

Q. They might have been affected, some of them, and you would not know anything about it. Isn't that true?

A. Not if it was on a sex question. I question them a little more thoroughly than you have been questioning me when it comes to questions of sex.

2181

Q. You inquire into every publication they read? A. No.

Q. You think you would know about it, but you are not sure? A. No, sir; not sure at all.

Q. And, Doctor, do you think the same standard as to what is obscene, which prevails for the text book designed for the use of physicians, or a scientific book on anthropology, should be the norm in a magazine of general circulation

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2182 available to and readily understood by young people? A. I don't think they are able to accept it now. I wish we were able to. I wish we were a little more forward-minded and could take the scientific facts.

I wish youngsters understood a great many more scientific facts. The boys I see who get into sex difficulties are the ones who are very ignorant about what they are up against.

Q. Do you think that the same things which can be published with impunity in a text book designed for physicians, or a scientific book on anthropology, may be properly—
A. A lot of it.

Q. —distributed among young people in a magazine of this sort? A. I think so. This is a little off your point, but that article on prostitution is a sociological article, and if I were teaching a class in sociology I would use it as an example for the beginner.

Q. I believe some reference was made to Dr. Margaret Meade's "Coming To Age and Some More" here. A. I believe so.

Q. Are you familiar with this book? A. No, I am not; I have not read it.

Q. But, would you say that there is a prevalence of sexual disorders today? A. That there is a prevalence of sexual disorders?

Q. Yes. A. I hear there is quite a little let-down in terms of the whole Army situation, and you see certain indications. I don't know what the real facts are. I haven't seen any more in my patients than I have ever seen before.

Q. You could not be able to state the reasons for the prevalence of sexual disorders today, could you? A. No, I could not.

Q. Are young men affected very much by environment in

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this matter of sexual relation? A. Yes. There has always been an interplay between environment and the personality of the given individual. You can't pick sex out as an isolated thing.

2185

Q. Are not those things which appeal to prurience contributing factors in this regard? A. Well, everything is sort of a contributing factor. You see, after all, one has an urge within the body which is made up as a resultant of the glands, the reaction of those glands, and there is a certain drive.

Then, we feel there is a psychological sex drive of that type. It is hard to know what it is.

2186

All those things are influenced by outside affairs.

I think, if you want to solve this sex problem, you should get after the family and teach not that these things are dirty, and so on, but teach the kids something about these things.

Q. You would start when he is quite young and bring him into it quite gradually? A. Yes, I would, in a natural way. I wouldn't emphasize it, over-emphasize it.

Q. You wouldn't bring him in contact with such things as we have been discussing here in this magazine, when he hasn't had some prior education on the subject? A. I wouldn't bring certain kids in contact with a lot of things. It is according to what age you are thinking about. Some 8 or 12-year old kids look at these magazines and say "phooey," and throw it aside. They mean nothing at all to them.

2187

Q. Until they arrive at the age of puberty, but after they arrive at the adolescent age they might be affected by things of this type? A. They might be. They search it out in lots of ways.

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2188

For instance, the doctor's son who takes the book out and shows all the kids in town what a woman looks like and what a man looks like and instructs half the kids in town. I don't believe these things are as dangerous as a lot of personal contact. Get after the parents and teach them something. Then you will be doing something.

Q. Has it been your experience, if you have heard Esquire discussed, that it is referred in such a way that it depicts the ideas of prurience? A. I don't think so. I have never heard it.

2189

Q. Doctor, would you agree with this definition of "obscene" from the Century Dictionary:

"Offensive to the senses; repulsive; disgusting; foul, filthy"? A. I can't dispute the dictionary.

Q. "Offensive to modesty and decency; impure; unchaste; indecent; lewd: As, obscene actions or language; obscene pictures." A. I will have to accept that.

Q. Now the definition of "obscene" from Funk and Wagnalls New Standard Dictionary. Would you agree with this?

"Offensive to chastity, delicacy, or decency; expressing or presenting to the mind or view something that decency, delicacy and purity forbid to be exposed." A. To the mind or what?

2190

Q. "Presenting to the mind or view something that decency, delicacy, and purity forbid to be exposed." A. I suppose again I will have to accept that. These are definitions. I can't dispute them.

Q. I see. Now, would you accept this second definition of "obscene" from Funk and Wagnalls New Standard?

"Offensive to the senses, foul; disgusting. Obscene publication and indecent publication which, whether true or false, tends to degrade and corrupt." A. I will accept that, but I won't accept the interpretation of a lot of people of what is disgusting and indecent.

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Q. Also "offensive to morals; indecent; impure."

Do you accept that as a part of the definition of "obscene"? A. Yes.

Q. Now, in the Century Dictionary, if the Century Dictionary defines "indecent" as follows, would you accept this?

"Unbecomingly, unseemly; violating propriety in language, behavior, etc."

Mr. Bromley: I object to that question as immaterial unless counsel contends that is what the obscenity statute means, unseemly—

Chairman Myers: It is better for your own purpose, I submit.

Mr. Hassell: We are dealing with the English language and I submit a definition from a standard unabridged dictionary—

Chairman Myers: The Board will take judicial notice of that.

Mr. Hassell: But we want it in the record:

Chairman Myers: You don't need it in the record if we take judicial notice of it.

Mr. Hassell: Dictionaries may vary a little.

Chairman Myers: We will take judicial notice of that.

Mr. Bromley: I object to it as immaterial. He has already done it twice.

2191

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2193

By Mr. Hassell:

Q. You would not object to definitions from Funk and Wagnalls and the Standard Dictionary of the words "dirty, indecent, lewd and obscene"—

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2194

Mr. Bromley: I object to it as immaterial whether he accepts it or not.

Chairman Myers: The objection is sustained.

Mr. Hassell: I submit—

Chairman Myers: The objection is sustained.

Mr. Hassell: Then I won't be heard at all?

Chairman Myers: You have already been heard.

Mr. Hassell: You have not heard me at all. This witness has been testifying for two days, trying to tell the Board what he means by these very things and I think we have a right to get into the record what his idea is.

Chairman Myers: I think he has told that numerous times.

Mr. Hassell: If he doesn't agree with these ideas, I think it is perfectly competent and proper for the Board to hear it.

Chairman Myers: The Board will take judicial notice of those definitions and if he doesn't agree they will examine that in the light of those definitions.

Mr. Hassell: That's all.

Redirect Examination by Mr. Bromley:

2196

Q. In connection with the "Paste-Your-Face" picture, did you notice that on page 88, under the heading "Afternoon of a sailor," there was a description of what should be done with the picture as intended by the editor? **A.** Yes.

Q. Are you able to see in that picture any lascivious, lewd, or indecent connotation whatsoever in the light of this part of the text material which I quote:

"This stream-lined tintype is genuine Coney Island, boys, complete with papier-mache waves, calendar-blue sky and

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water baby. To be a Don Juan for a day, you need only paste your own likeness in the indicated blank space. A half teaspoon of flour from the cook's galley and a drop of water will do the trick. And the nymph in question, incidentally, is Peggy Cordrey, currently playing in 'Early to Bed.' She confesses a passion for the principles of navigation, is dying to learn how to brace the main splice, batten down the hatches and all the other fascinating lore that only a sailor knows. So don't hesitate to introduce yourself. What you eventually decide to do with the seascape is your own problem. If you go in for whimsy, you might air mail it to your family and tell them you're engaged."

2197

In the light of that textual matter, do you see any possible filthy, indecent or lascivious connotation from that cartoon or drawing? A. I do not.

2198

Q. In the May issue in connection with Paul Gauguin's article on burlesque, wouldn't you say that article as a whole does not paint an attractive picture of burlesque? A. I think that is true, yes.

Q. And finally, after this cross examination, do you still believe that the material complained of is not obscene, filthy, lewd or indecent? A. I do.

Q. And have you changed your opinion in any respect as to any of it? A. No, I have not.

2199

Mr. Bromley: That is all.

Mr. Hassell: That is all.

Chairman Myers: We will adjourn at this time until 9:30 tomorrow morning.

(Whereupon, at 5 o'clock p. m., the hearing was adjourned until 9:30 o'clock a. m., Tuesday, October 26, 1943.)

HEARING OF OCTOBER 26, 1943.

2200

PROCEEDINGS RESUMED.

Chairman Myers: Proceed, gentlemen.

Mr. Bromley: Mr. Channing Pollock.

CHANNING POLLOCK a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

2201

Direct Examination by Mr. Bromley:

Q. What is your full name, Mr. Pollock, please? A. Channing Pollock.

Q. And where do you reside? A. Shoreham, Long Island, and New York City.

Q. And what is your profession or business? A. I am an author, dramatist, and lecturer; rather more an author than the other two, I should say.

Q. And how long have you been engaged as an author, dramatist, and lecturer? A. More nearly 50 years than 45.

Q. Where were you born? A. In this city, on March 4, 1880.

Q. And will you tell me something of your educational background and something of your degrees, if you have any? A. I was educated in the public schools of Washington, at Bethel Military Academy at Warrenton, the Polytechnique at Prague, Austria, and private tutors in Central America where my father was United States Consul General.

I have honorary degrees of Doctor of Letters from Colgate University, and Doctor of Laws from Northwestern Univer-

Channing Pollock—for Respondent—Direct.

sity, and I don't know if it is proper to say, but in both citations it is specifically mentioned that the degrees were given on account of my service to character and morals in the United States.

2203

Q. Will you tell us something of the professional work in which you have been engaged over your long and varied life? A. I have written and produced 31 plays, including the "Sign on the Door", "The Fool", and "The House Beautiful", most of them done in most European capitals, and many done in every country in the world.

I have written, four, five or six novels, a dozen books of essays, an autobiography called "The Harvest of My Years", published last May, I believe.

2204

I have written for nearly every magazine in America, except Esquire, and continue to write for magazines.

I publish an editorial every second or third week by contract with the magazine called This Week, published by 21 newspapers, including The Washington Star. I write my head off.

I have lectured for 22 years, covering about 45,000 miles of the United States every year, delivering about 2500 lectures in all.

I have occupied the pulpit many times of every denomination in America except the Catholic, which does not have lay preachers, although I have spoken in a great many Catholic schools, and by invitation before the Quakers and Mormons.

2205

I am, I believe, a life member of the Clergy Club in New York.

I have engaged in a great many so-called extra-curricular activities because from my father I inherited a certain tendency towards crusading.

Channing Pollock—for Respondent—Direct.

2206

Just after the last war we had the so-called usual ante-bellum decline of, let us say, delicacy, in our literature, and for three years I lectured almost exclusively in universities and elsewhere on that tendency in literature, opposing it bitterly, saying that it was a dangerous and decadent tendency.

2207

I was closely associated with the late Cardinal Hayes in the move to clean up the stage in New York after the last war. The Cardinal and I agreed that the best way to do it was from inside. The Cardinal was very much opposed to censorship; and together we worked on it; we worked with the Author's League. As chairman of the Author's League I was working very hard to clean it up from within, if that phrase is sufficiently explanatory.

I think if any clergyman or layman is interested in asking who has been the most active man among laymen for decency in literature and drama, the answer would be Channing Pollock. I do not say that with any conceit, but because I have worked very hard along that line:

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Q. Now, how broad has your coverage in this country been on your literature tours? A. Well, there is no town or city of 5,000 population that I have not visited. I question whether there is any man of importance in the United States with whom I haven't met or talked. That intimacy was so great that during the last years of prohibition I was asked to Washington by the Congress of the United States specifically to report to Congress what I had learned about the workings of prohibition throughout the country.

Q. Would you say that you were familiar with current standards of morality so far as they relate to the magazine field in this country today? A. I should say without conceit that no one is more familiar. Part of my business, of course, is a writer for magazines and I must be careful and scrupu-

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lous in reading nearly all the magazines published. You have to know what your market is.

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Q. Would you say that your familiarity has extended back over 25 or more years so that you are familiar with our changing standards of morals if they changed? A. They have changed radically, and I should say that 25 years was a very conservative estimate.

Q. Now, have you been concerned with the production not only of the kind of plays you have mentioned but with shows like the Ziegfeld Follies? A. I wrote 10 musical comedies. Two of them were Ziegfeld Follies. I collaborated with Victor Herbert and other notable composers in a series of plays. Two Ziegfeld Follies shows I devoted all my time to and I devoted a whole chapter to Ziegfeld in my autobiography because of my intimate knowledge of him.

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Q. Have you ever been a dramatic critic? A. Yes; I have been a dramatic critic in this city. I was a dramatic critic for the Washington Post and for the Washington Times. I was also a dramatic critic for several magazines, including Smart Set.

Q. Have you ever been engaged as a press agent for the theatrical business? A. I was engaged as a press agent for William A. Brady and for the Shuberts for many years.

Q. Now, at my request have you examined the material which has been objected to by the Department in the eleven issues of Esquire for 1943? A. I examined it very carefully and when I found myself completely mystified I decided I was probably what is called too hard-boiled, so I took it to my mid-Victorian wife, who is an invalid, and she professed at being mystified, and I took it to my daughter and asked her to examine it and her reaction was one of disgust that the charges should have been brought.

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Q. On the basis of your knowledge and your experience during the past 45 years, are you able to give an opinion as to what relation the material objected to bears to the current standards of morality and decency in this country at the present time? A. I should say it reflects them. I think it is an admitted fact that almost all contemporary literature must reflect the spirit of the times. James Huneker, the great critic, wrote a very learned essay on that. Of course, I don't know whether—you can stop me if I am wrong in saying this—but all the, let us call it morality, all printed or like matter must be judged entirely in relation to the width—is it right to say this?

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Q. Yes. A. In relation to the width of the gulf between current opinion and what is the prevailing code in printed or active matter. It can't be judged any other way. The literature of the Restoration would seem very coarse in our day, and the Victorian literature would seem very prudish in our day, now. Neither one would seem as prudish or coarse in our day at this time. You have to judge according to the morals. I am using morals in a special sense, which I will explain in detail a little later.

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For instance, by a great many people Nietzsche is considered coarse; people who have never read Nietzsche. Nietzsche has a very extraordinary essay in which he speaks of the changing code of morals, and then he goes on to explain that he uses morals in the correct sense. He says:

"I do not refer to fundamental morals which never change", and he goes on to say that fundamental morality is that sort of morality which has not changed in four or five thousand years of recorded history; that you cannot call fundamental moralities those things which change every ten years or so.

A few years ago a woman who smoked a cigarette was

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immediately judged a dreadful woman, and no one pays attention to a woman smoking a cigarette now.

I recall one play presented in Washington when I was dramatic critic here. The general agreement was that the fact she smoked that cigarette established her character. To-day anyone would call that absurd.

The same is true of most things printed and published taken in connection with the customs and morals of the times.

In 1904 I produced a play and Harry Powers of Powers Theatre said he would not let the curtain be rung up unless I cut out one word that had never been spoken on his stage and never would be. That word was "mistress." Today that would be called the height of absurdity.

I remember distinctly the first time I ever saw a woman without stockings on the beach. She was the sister of Harriett Stanton Blatch, the noted suffragette. Her name was Margaret Stanton and everybody in the village called her "bare-legged Mag."

I know a woman on the beach today with stockings would be followed by a crowd. If you do not wear stockings, or if you do wear stockings, is not important. It is a reflection of the views of the times.

Q. What about your views whether it accords with current day standards for a magazine to print, no matter how spelled, the word "son-of-a-bitch"?

Mr. Hassell: I object; the same objection.

Chairman Myers: Overruled.

The Witness: I can't think of a better example of what we have been talking about, the reflection of current morals and customs. Of course, the evil of "son-of-a-bitch" is purely one of connotation. "Son-

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"of-a-bitch" is son of a dog. The phrase "son-of-a-dog" is one of the commonest phrases in all Oriental countries, and it is not an insulting phrase.

A few years ago it was taboo, and now it is so current that every night and three matinees a week it is spoken by a child on the stage.

Q. Where is that? A. "Kiss and Tell."

Q. Spoken by a twelve year old child? A. A 12 or 14 year old girl, a child.

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In certain company I wouldn't use the word. I think all of us have used the word and have not been corrupted or corrupted the company.

Q. What about its acceptance on the printed page of magazines of general circulation? Has it come to be accepted and not to be considered obscene? A. Ralph Waldo Emerson wrote the best definition of obscenity ever written when he spoke of a matter of intention. I have seen it very, very frequently in magazines. It occurs almost continually in our books, in our modern books, and when some board of censorship, the Motion Picture Board of Review, cut it out of Noel Coward's recent motion picture the chorus of ridicule that flooded the country was one of the loudest choruses I have ever heard, because the word was spoken by a British sailor clinging to a life raft, covered with-burning oil and so forth, and it was so obviously the only thing he could say that from press and public all over the country there came a chorus of ridicule.

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I don't think the word was ever restored, but it certainly is a very commonplace word these days.

Q. Do you remember in Mr. George Jean Nathan's theatrical column in one of these issues, among things he objects to on the American stage were the words spoken by one of

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the Dead End boys in "Dead End," who uses the words "crap" and "Jesus Christ," and a lot of slang of that sort. A. After all, the word "obscene" is from the Greek "ob-scena", that which must not be spoken on the stage.

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Q. Is that where the word derives? A. Yes, "obscena," that which must not be spoken on the stage.

I should say that on the word of Aristotle—I don't want to be academic—but that which is heard is ten times as powerful as that which is read. If it can be spoken for years, then the report of it must be justifiable.

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Moreover, that is a question of times.

All of these words are good Anglo-Saxon words. "Crap" and "crapulous" occur constantly in Shakespeare. It is a perfectly good English word. I shouldn't call it a delicate word, but there is a wide gulf between indecency and obscenity.

Q. What do you say about Mr. Nathan's use, in the same article, of such words as "St. Louis sporting house," "bawdy," and the words "whore," "narlot," and "prostitute"? A. That leads to interesting reflections. We have ears that are attuned to delicate euphemisms. There are probably a hundred synonyms for the word "whore." I think "whore" is the most decent of all because that is an Anglo-Saxon word, justified by English literature whereas the others are bastard words, in a sense, but, if it is decent to express it at all, I have never been able to understand why you must choose a word that means the same thing but has a better sound. Why should you say "prostitute"? Everybody agrees that is a respectable word; but why should you say it instead of "whore"?

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When I was a boy the only way you could print "damn" in a book was to print "d---". That deceived no one. Everyone knew what it meant. What was the difference?

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2224 Unless you are going to rule that none of these institutional persons and things in the United States must ever be mentioned, which would be to rule out all printed material of every kind from newspapers to books, unless you agree that there must never be a reference to those things, there must be a conspiracy about them, you must use such words.

I believe the latest word is "brothel" or probably "bagnio"—maybe that's the best word because almost no one knows the meaning of it, and, therefore, it ought to be a good word.

2225 There is a complete page of synonyms in Roget's Thesaurus. You must use one of them unless you say "None of these things must ever be referred to," and that conspiracy of silence has been outlawed by our generation, and I think rightly so.

For example, a magazine that printed articles on syphilis a few years ago would have been in trouble, and today I think it is agreed that the Reader's Digest crusade against syphilis is one of the greatest things ever undertaken in America.

If you want to read many of the words to which objection is taken now, you should read these articles in the Reader's Digest.

2226 The Reader's Digest is a magazine of far more general circulation than Esquire, with the circulation certainly in excess of eighteen million, the biggest circulation any magazine has ever had in the history of the world.

Q. Will you state, if you can, generally, to the Board, whether or not the objected-to items in the magazine are or are not in accord with current standards of morals and decency in this country. A. They are so in accord that I venture to say that any one hundred normal average persons selected from the persons who walk up and down these lob-

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bies and the street would read these magazines from cover to cover without noticing anything extraordinary unless his attention had been called to it.

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Q. Is there any item whatever in any of that material which conflicts with or violates or runs contrary to current statutes of decency and morals in this country? A. I should say not.

Q. Will you please state the basis of your opinion with respect to the Varga drawings, first, and particularly? A. My mid-Victorian wife makes a point which I should like to defend, that nothing can be, at the same time, beautiful and obscene, that only what is ugly and offensive can be obscene.

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For instance, the totally unclothed figures in the Corcoran Gallery and the Metropolitan in New York are not obscene, but, on the other hand, a very fine work, Rodin's "Aged Courtesan" is ugly.

But just as laughter is produced by that which creates surprise, and only surprise, I should say that which causes impure desire is caused by lust.

I saw a magazine once that was barred from all the mails as obscene, because of a cover. I was a little annoyed when I first heard of it because it seemed to me an unwarranted exhibition of censorship and, when I saw the cover, I agreed with the Post Office Department.

The woman was drawn with all the imperfections that create lust.

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The Varga drawings, I think, are very attractive. They are pinned up in the dormitories of perfectly decent young women throughout the country. They are very attractive young women, far more clothed than a great many of the girls on our beaches or in our ballrooms.

I should say a view of that sort of thing is a state of mind. I was in the Louvre in Paris one day when a Frenchman

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reached up and pinched the bosom of Venus de Milo. The Frenchman was obscene. The Venus de Milo was not obscene.

And Grant Allen wrote a story about a vicious man who mentally undressed a woman dressed in the fashion of the 80's in the street. That doesn't mean that the woman was not properly clothed. It meant the man was a candidate for a lunatic asylum.

Many years ago the editors of really pornographic magazines like Sourir in Paris and the German weekly "Fliegende Blatter" practically abandoned resorting to women as partially unclothed as the Varga women. They went in for ladies in dirty, high black stockings and so forth and so on.

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There is nothing in the Varga drawings that is not familiar to anybody who ever went on the beach in the United States, and I should say it must be a very strange man who found anything in them other than very attractive femininity.

Q. Do you remember the poem in the January issue called "Benedicts, Awake!"? A. I remember it very well because I think it is one of the finest poems I have read in any modern magazine. I think it compares favorably with any poem that has been written since the beginning of this war. Was it Alan Seeger who wrote "Rendezvous with Death"? And "Rendezvous with Death" certainly goes a great deal further in an erotic sense than this poem does.

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A great many of the poems that are most celebrated in our literature, Shelley's "Good Night", and certain lines in Keat's "Ode to a Grecian Urn", make this poem look like Sunday School stuff.

There is nothing pornographic in that poem. It is a very fine poem. I think it is likely to be included in the anthologies and remembered a great many more years than you think.

Q. I call your attention specifically to the three times

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repetition of the opening stanzas of each verse, "Men sleeping besides your wives, awake?" A. Is there anything wrong about men sleeping besides their wives, and if there is nothing wrong about men sleeping beside their wives, what is wrong about mentioning it? I believe divorces are granted because men don't.

Q. Do you remember the review by Seldes of those "Star and Garter Blues" in this same issue? A. Yes, quite well.

Q. Do you find anything which is indecent or goes beyond the current day standards in any part of that review of the show by that name? A. I should say roughly that there is nothing in that review that has not been printed by every critic in New York in his review—I don't mean in each review, but all of them—it is a legitimate report of a musical comedy about which I can say nothing more than that I celebrated my 39th wedding anniversary by taking my wife and daughter to see it. Later, I took Mrs. Will Irwin, the wife of the celebrated war correspondent, to celebrate her 30th anniversary. We all found it amusing.

Q. What is the basis of your opinion as expressed, with specific regard to the column at page 123 of the January issue which begins: "Dear Doctor Diddle"? Do you find any obscene or indecent connotation in the use of the word "diddle"? A. There is a nursery rhyme "High diddle diddle, the cat and the fiddle". What about that? Another nursery rhyme "Johnny diddle diddle", and so on. All children know them.

The Oxford Dictionary says: "Diddle" means to confuse, to obfuscate.

You can take almost any slang word and attribute another meaning to it, but I should say it would be an extraordinary man that would do so.

Q. Do you remember the Sultan cartoons that appeared

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2236 with some regularity throughout the eleven issues? A. I should say from memory there are about three.

Q. What is the basis of your opinion with respect to them, having regard to the fact that the charge has been made that they seek to import into our civilization an immoral practice, i. e., the practice of selling slave women or concubines or dealing with them? A. I see nothing in the pictures to show that these women are concubines. If so, what of it? I think we indulged in selling slave women up to 1865, and there is an excellent picture of the sale of slave women in the Chicago Institute that I have never heard cited as obscene.

2237 I divide things into naughty but nice and naughty but not nice.

Q. Did you read the story of "The Unsinkable Sailor"?
A. Yes.

Q. That occurs in the February issue. Do you remember the references there to the episode of the fruit jar of urine and the episode of the new secretary in the union hall who became frightened? A. As to references to the jar, I might say it was rather coarse, but not obscene. Of course, the same story is told by the Harvard anthropologist, Dr. Hooton, who tells a story about the cholera scare in China. It is certainly not going to raise any lascivious desire.

2238 As to the story about the boom, I had to have the evil meaning called to my attention before I knew it was there. It is common marine slang.

Q. Do you see any evil connotation about writing an article in which the new woman secretary at the union hall misinterprets the phrase? Remember, she ran screaming from the room saying, "That man wants to do something terrible to me." A. That is merely funny.

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Q. What is the basis of your opinion with respect to the article by Gilligan entitled "The Court of Lost Ladies"? A. I was a police reporter for the Washington Post before I became a drama critic. Maybe they thought the two professions were closely allied.

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I don't think a good reporter could write a story about night courts without writing very much of that sort, and it has been written time and time again by sound papers, and Will Irwin wrote a report of the same type for the Evening Sun a good many years ago which, if the Pulitzer prize had existed then, probably would have won the Pulitzer prize.

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It is cited in many anthologies.

I should say the predominate feeling in this article is one of pity and solicitude and regret that there should be such things.

As a matter of fact, all through these magazines, reading them carefully, I got the feeling that most of this stuff is the very reverse of that which excites desire to commit evil acts; that it rather says continually "This is absurd, these things are for evil children", for what Eugene O'Neill calls "half-witted children": Sophisticated, intelligent people don't indulge in those things; there is a tongue-in-the-cheek attitude in all these articles that is the very reverse of concupiscence.

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Q. You think the last article to which I called your attention, "The Court of Lost Ladies", would have any tendency to teach these women how to avoid being arrested or how to avoid conviction of the charges of prostitution? A. I should think it would have a much greater tendency to teach them to avoid prostitution and to steer clear of it. If anything about prostitution is made attractive in that article, then I really ought to be committed to a home for

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morons. I can point out in modern literature fifty, seventy-five books which give more latitude and make that thing more desirable and glamorous certainly than this article does.

Q. As bearing upon the change in American standards of morality, would you mind telling the Board briefly your experience with George Bernard Shaw's play "Mrs. Warren's Profession"? A. Yes. I can't think of a better example of changing *mores*. "Mrs. Warren's Profession" was produced twice. The first time was its performance in the United States in the Garrick Theatre. While the performance was on the theatre was raided and the audience was turned out in the streets. The second time was when it was given before 1600 clergymen at a private performance and these clergymen saw nothing wrong in the play at all.

Q. After a lapse of how many years was it, Mr. Pollock? A. After eight years. The first time it was produced at the Garrick Theatre and the second time at the Manhattan Theatre.

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Q. With what subject does "Mrs. Warren's Profession" deal? A. "Mrs. Warren's Profession" deals with a bawdy house and the characters therein. The leading character is the Madam of the bawdy house. There is no question in the world that from a superficial aspect Shaw rather celebrates the ancient and honorable profession. He says so emphatically and Mrs. Warren in the play says to her daughter: "If you don't think my profession is more honorable than scrubbing floors" and so forth and so on, and yet I don't think that any first-rate critic in the world would not say that "Mrs. Warren's Profession" was not a deeply moving outcry against social conditions that the play was attempting to correct. It is a moving outcry

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against social conditions that could make it possible to say that to be the madam of a bawdy house is not as bad as scrubbing floors. Scrubbing floors was done at an average of twelve hours a day at wages that I hate to think about, and Mr. Shaw's entire purpose was to attack that social system and not to praise bawdy houses.

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Q. About what year was it that the police raided and closed the opening night of the show? A. I have a very bad memory, but I should say it was about 1902, at the turn of the century. May I add that "Mrs. Warren's Profession" was until three years ago barred by the censors of the Lord Chamberlain in England. It could not be produced in England. On Mondays, Tuesdays, Wednesdays, Thursdays, Fridays and Saturdays it could not be produced, but on Sundays it could be produced by amateur groups. That is one of the anomalies of the thing, but until three years ago "Mrs. Warren's Profession" could not be produced in England, and three years ago the Lord Chamberlain reversed himself with the statement that it could be produced and it has been produced in England, where, by the way, it failed dismally, because the time has passed; it is no longer either sensational or cogent.

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Q. Have you examined all of the comic strips in two of the issues entitled "Exploits of Esky"? A. I have. They are intensely stupid, but I can't see that they are obscene.

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Q. Do you think the drawings, particularly the one of the woman standing in water up to her waist and naked from there on up, and Esky looking at her over a bush, and four or five nude women depicted in one of the cartoons, some with their backs to the beholder, have any element of indecency in them? A. No, because girls don't usually have clothes on in the water. "September Morn" was cleared by I think a dozen courts in the United States.

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2248 and if you object to the idea that a man was looking at her, I should say that that idea is absurd. Take the picture "Susanna and the Elders" in the Corcoran Gallery, and another picture of "Susanna and the Elders" in the Chicago Institute of Art, and the third in the Metropolitan Museum, and numerous other like pictures in all the famous galleries in Europe. The subject matter of a man spying on a naked woman was very common in religious pictures in the Middle Ages. You will find it in many galleries all over the world, and many pictures were painted under the direction of the Church. The fact that a man looks at a lady without any clothing does not convey any indecent idea.

2249 Q. Now, what is the basis of your opinion with respect to "The Eve of St. Mark" picture and text which occurs in the May, 1943, issue, and with particular reference to the 20 per cent do, 20 per cent don't? A. In the first place, "The Eve of St. Mark" is a play by a man who is probably our most distinguished dramatist at the moment. I am one who does not believe that our distinguished authors write filthy material or are willing to do so at any price.

2250 "The Eve of St. Mark" ran roughly about 700 performances in New York and was acclaimed by every critic in town. Mr. Maxwell Anderson, who wrote it, in a spirit of generosity made the rights free to amateur groups, and I should say it has been presented in some scores of churches and in many hundreds of universities throughout the country.

There was a little row recently because it was performed before an altar in St. Louis. The contention was not that it was performed, but that any play should be performed before an altar, with which I agree.

When the play was produced in Copenhagen, the best of the European critics said it was the most sensational

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play and it had the best conception of the war of any play that had ever come out of the war. I have never heard anybody say that there was anything indecent or obscene about it, although I should not be surprised if anyone used the word "son-of-a-bitch" in the soldier conversation, and I never heard any one criticise the play on that account, and I cannot conceive of anyone objecting to the play on that score.

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As to the 20 per cent do and 20 per cent do-not, well some do and some do not. If there are glasses on the table that might refer to drinking and if there are not I don't think it is important. It is obvious that some do and some do not; in fact, I think it is very generally acknowledged.

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Q. You see, do you not, that the text refers to the fact that the soldiers have come from a discussion of a hygiene lecture in which it was estimated that 20 per cent do and 20 per cent do not? A. Yes. I do not see that there is any indecency in that. It was all right when it was in the play.

Q. And certainly this is a true report of that which was mentioned on the stage? A. Oh, yes.

Q. You saw the play? A. I saw the play repeatedly and I must say that there has not been produced in several seasons in New York a play so utterly without objection to it. I don't know of my own knowledge whether "The Eve of St. Mark" was on the Catholic White List, but I should say it is very peculiar if it was not. It was certainly urged upon congregations in the best churches in New York.

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Q. What is the Catholic White List? A. There are two Catholic White Lists, I think. I can't be too sure on this. There is a board, I believe, headed by one or more cardinals which passes on all the books published in the course of a

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year and makes a list of those which are recommended reading to Catholics and other decent people. The Catholic Church takes the extremely sane view that it is better to recommend a book you should read than just condemn the books that you should not.

Then there is another one headed by the former drama critic of The Christian Science Monitor. I don't know whether that board has any ecclesiasts in its composition, but it regularly issues a so-called White List of plays that may be seen by people of the Catholic faith. Those two lists are I think rather commonly accepted, certainly among authors, publishers, managers, and by people in general as the most definite award of merit for decency. They have been by and large I think the most liberal, sane, and generally wise lists of books and plays to be read and seen that has been published in this country.

Q. Have ever any of your plays been barred from this list or has any of them ever been contained on that list?
 A. Since there has been a Catholic White List I have never written a book or play which has not been on the Catholic White List. My recent book "Harvest of My Years" by sheer accident, like Abou Ben Adhem, headed the Catholic White List.

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Q. Now what is the basis of your opinion with respect to this article contained in the June issue entitled "Libel Suits Were As Wine To That Hell-firin' Editor of the Old West, Dave Day"; and particularly the three references near the bottom of page 134, the one about two-in-a-bed spoon fashion, the other about the 18-year record of virginity; and the other about the asterisk: A. Well, beginning in the middle, the one about the eighteen years of virginity, that becomes an American classic. I heard it in the early 80's in my boyhood. It is one of those things that have been

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brnited about for many years and there is certainly no obscenity about it. It is a coarse, good-humored jest that has no social significance.

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As to the one about the asterisk, I will say that until my attention was called to it last night I did not get the meaning. Probably because I have a clean mind. I have tried to overcome that without much success, and I did not know what it meant until someone told me, and I think, if it means what this man said, it is just an extremely amusing pun. I don't know what is wrong with it.

You see, if you adopt it as universal, the claims made in this case, all art and literature would be absolutely impossible. It would be absolutely impossible. There could not be a writer or artist in the United States. You cannot have art and literature on the terms of removing all references to sex, to marital relations, to prostitution, and all these things. I mean you gentlemen know as well as I do that there isn't a great book in the literature of the world that would not be an offense in some way.

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I read the other night—because I have happened to have written two articles on the subject in the last week—Dickens' "A Christmas Carol." It was written a hundred years ago next Christmas and, therefore, the article is very timely, and I read it after I read these magazines, and I can point out a dozen passages in "A Christmas Carol" which William Makepeace Thackeray said was the finest contribution to literature ever made, and I can point out a dozen passages in "A Christmas Carol" which, under this heading, could be said to be objectionable. You can read anything into anything.

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A few years ago a book was published, a copy of which the Congressional Library here has, called "Mother Goose Unexpurgated", and it gives all the Mother Goose rhymes

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2260 without the addition of a single word. I have tried to obtain a copy and I have not been successful. It does not add a single word except where the word could give another meaning to the sentence, then the original word was taken out and a blank left there so you could substitute for yourself. It was perfectly obvious that you could not read very long before it became objectionable, but that was not the fault of Mother Goose, it was the fault of the person who read it.

I admit that I read it; every one of those dashes and asterisks meant something else, and it meant nothing to me 2261 but just a mild joke, and I dare say the average man wouldn't suspect a thing and, if he did, what of it?

Q. This Mother Goose to which you refer, who wrote it do you remember? A. I haven't the faintest idea. It was first called to my attention in the censorship case in Philadelphia, a motion picture censorship case in which I was a witness, and I tried to buy one and could not for the excellent reason that they were sold out months in advance of going to press. I know it is in the Congressional Library because it was copyrighted. There isn't a word in it that is not in the Mother Goose rhymes.

Q. It has never been banned, so far as you know? A. Oh, 2262 no.

Q. I wonder if you could not give us an example by reciting a line or two? A. I am afraid I could not because, as is true with this, if I read anything having a normal view of things I remember it, but if I read anything that is conspicuously obscene I should think I should remember it, but I cannot. I remember when I was in Czechoslovakia for some time I only learned two words in Czech and both of them are obscene, and they are the only two words that cling to my mind, but I don't remember anything in Mother

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Goose, I don't remember anything in these magazines and did not, until it was called to my attention.

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Chairman Myers: That was not the Mother Goose Rhymes that appeared in the Bodley Library at Oxford?

The Witness: Yes, sir, the same book.

By Mr. Bromley:

Q. What I am trying to do is to see if we cannot illustrate this thing like "Mary had a little lamb, its ————— was white as snow" is that what you mean? **A.** That is what they did.

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Q. What they did was take out a word? **A.** That is right, and any human being reading that book would substitute a word. After all, you can't change human nature by doing these things; after all, if you did otherwise you would just divide male and female and have nothing else, but you cannot alter or change people by making a secret of it.

Q. Now what is the basis of your opinion with respect to this article "Many Wives Too Many", which discusses somewhat satirically Dr. Joad's theory of plural marriage.

A. I think its one tendency would be to discourage plural marriage which, I think, reasonably ought to be discouraged. I don't see any other significance in it than an obvious satire and very dissuasive of the scientific phases of plural marriage, which may be necessary in these times. The statement that is made is made so continually now that it is almost alarming. It has been raised in the House of Commons in England. Sokolsky, in last night's Evening Sun, treated it as a possibility if this war goes on.

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Channing Pollock—for Respondent—Direct.

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I should think it would be unfortunate from many angles, including the economic. Good heavens, that gets me right back to the statement that if you ban these things it would be impossible to write. If this sort of thing was crystallized in our law or in the force of public opinion, after fifty years of writing, and in spite of it, if that day should ever come about; I would lay down my pen and say "That is all. I can't write with fetters." And I have never written anything that anybody said was indecent or obscene.

I can take any play or any novel that I have written and pick out something that someone would say is objectionable. That does not mean that it is objectionable.

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Q. Do you remember the story of "Offensive on the Home Front" in the August issue of Esquire, with particular reference to the man slapping a prostitute and the statement that he noticed how large the uniform made his wife's behind look? A. That gets us back to what I said. You have got to use some word. I take it that it is justifiable to admit that a woman's anatomy includes a posterior. If she has an anterior she certainly has a posterior and you certainly have to call it something. Now all of our early writers used to call it "arse" which is the true word.

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Chairman Myers: I believe Chaucer used it, did he not?

The Witness: Chaucer uses it and uses it so continually and so frequently that it gets to be monotonous. Chaucer used it in what today is very vulgar and filthy puns. You remember the one about the lady sitting on the particular thing? You have to call it something. What do you want to call it? Arse, buttocks, posterior? The English used to call it "bum". You have to call it something or just ignore it.

Channing Pollock—for Respondent—Direct.

By Mr. Bromley:

2269

Q. Why don't you call it a seat and be satisfied? A. It gets back to "damn" and spelling it with a "d" and some dashes and an "n". I don't see the use of equivocation; there is no use or sense to it.

Years ago I used the line in which I said "the bullet left a little purple mark above the boy's nipple" and the editor refused to print it, but he let me say "the bullet left a little pink mark just above the center of the boy's breast."

What is the use? What is the difference? After all, all reading is a matter of image. What you read produces a mental image if you are an intelligent person and the mental image is pretty largely up to you. I should say that outside of the kind of obscenity that any kind of policeman knows about that the obscenity is purely that which is in the reader or beholder; that it entirely depends on the one who reads or sees.

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Q. What is the basis of your opinion of the article in the October issue "Wise Men Pick Pyknic Girls"? A. That is a pseudo-scientific article. It is one of the oldest scientific theories in the world. You remember the great scientist Jung, I think you are familiar with Jung's argument that the degeneracy of the race began when it cast off the flat-chested type of women. When he uses the words "play girls" that is but in contra-distinction to the type of women whose build makes for potential mothers. He said the degeneracy of the race began when men wanted to have women to play with, to have fun with, in contrast to the great period of virility when there was the broad ample bosom woman. It is an old scientific theory. It is almost as old as science itself. It occurs every now and then. This is simply a very temperate theory that involves a little

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Channing Pollock—for Respondent—Direct.

2272

amusement. After all, I can't understand the view that the fact that woman is a mammal is supposed to be a secret between the woman and God. We must suspect it, mustn't we?

Q. What do you mean by your reference to "women to play with"? A. That was the reference that I had to Greek history where the young men wanted to play games, to throw the discus around. I certainly did not mean the sexual thing; that was not it at all.

2273

Q. What is the basis of your opinion on the story entitled "Portrait Above The Fireplace" in the October issue of Esquire? A. I think it is one of the finest short stories which I ever read. It is an extremely familiar fiction pattern. As you know, it has been done again and again and again. After all, it is the story that counts. If you accept the fact that the portrait was a portrait of a shoplifter the story would not be altered in the least. The story is the story of a man who owed his regeneration to his idea of the character of the woman. It is a very familiar pattern. It doesn't make any difference whether the woman was a shoplifter or a prostitute or a three-card monte dealer.

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Q. Or a murderer? A. Or a murderer. To select that single paragraph is extraordinary. Marcel Provost's story—incidentally I'm not sure whether it is a story or not—Marcel writes about a man who looked over the entire world for a perfect face to depict in a painting of the Madonna and then discovers that the face that he had pictured was the face of a prostitute. It is one of the most famous stories in literature. It is the same pattern.

I should have been proud to have written that story and I think that any editor in America would have been proud to print it. There isn't any doubt on earth that any magazine in the United States would have bought and published that story if it had been offered.

Channing Pollock—for Respondent—Direct.

Q. Would you say, Mr. Pollock, in great works of history and biography the element of sex has been basic, and will you give us some examples? A. Yes. Since the element of sex is basic in life, without it we should not be here, then any reflection or representation of life must use the element of sex basically. It is certainly the element of not only history and biography, but of everything.

You will find in Plutarch's Lives an enormous number of statements which would certainly be barred from the mails. There are a couple of paragraphs of homosexuality in Greece which would not go through the United States mails, properly not. That was another time.

There are, of course, probably five thousand, I am guessing, biographies of Cleopatra, and most of them are saturnian and dealing with sexual excesses. The net result of them all is to discourage the behavior of Mark Anthony, who did not participate very much in it, let me say, in this connection. Going back to Ralph Waldo Emerson's definition of "intent", that one of the standards must be of the intent of the beholder to distinguish concupiscence or the reverse. For instance, in a book like Louis Bromfield's "A Good Woman" which in its very title sneers at the domestic virtues, I think you have an evil book, a dangerous book, and there probably is not a sentence that you could object to in the book, but most of these biographies do not encourage that sort of thing. Most of us would not be encouraged to do that sort of thing.

Obviously it would be impossible to write any literature which is under those terms; obviously it is impossible and must be impossible to write biography or history under those terms because you would have to ignore everybody, who made our history. After all, how can you write of the story of the French people leading up to the French

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Channing Pollock—for Respondent—Cross.

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revolution without writing about harlotry and concupiscence?

Chairman Myers: Or the Comedies of Aristophanes.

The Witness: Yes, certainly.

By Mr. Bromley:

2279

Q. Now I have been specifically directing your attention as to the individual issues of Esquire. Did you find anything in these eleven issues which, in your opinion, was indecent, obscene, lewd, lascivious or filthy or which in any way went beyond the current standards of morality in this country? A. I can only repeat by referring to my wife of forty years who is essentially a mid-Victorian, and to my daughter who is the best girl whom I have ever known in my long life generally, and neither of them found any such things.

Mr. Bromley: That is all.

Chairman Myers: Suppose we take a recess for a few minutes.

(Thereupon, a short recess was taken.)

2280

Chairman Myers: All right.

Cross Examination by Mr. Hassell:

Q. Mr. Pollock, a large part of your activity has been in connection with the stage, has it not? A. Yes. I should say the major part.

Q. You founded and edited a stage publication at one time? A. I beg your pardon?

Channing Pollock—for Respondent—Cross.

Q. You founded and edited a stage publication at one time? A. Yes, called "The Show".

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Q. You have produced written works in collaboration with Avery Hopwood? A. Yes, one in particular.

Q. What was it? A. A play called "Clothes" produced in 1906 at the Manhattan Theater in New York. The play was really written by Avery Hopwood and professionalized by me.

Q. Did you write "The Fool"? A. I was one of two men who wrote it, yes.

2282

Q. You wrote it with some one else? A. Reynold Wolf.

Q. And another play called "Hell"? A. Yes, with Reynold Wolf.

Q. You produced the Folies Bergere in New York? A. Well, that was the name of the theater, it wasn't the name of the show. The show was called "Hell".

Q. Produced at the Folies Bergere? A. Produced at the Folies Bergere and now called the Fulton Theatre.

Q. I believe you said that you produced two of the Ziegfeld Follies? A. Yes, if I remember rightly, in 1915 and 1921.

Q. Are you, in examining matter and pictures and so forth, having in mind the liberality with respect to the lack of clothes that was notarized in the Ziegfeld Follies?

A. I do not agree that it was notarized in the Ziegfeld Follies. There never were more decent productions of musical-comedies in America than Ziegfeld. If anything, Ziegfeld over-dressed his girls. I never knew a man that was more determined that an objectionable line should not be spoken on his stage. The Ziegfeld Follies was eminently a decent entertainment.

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Q. You contend, then, that those shows and the women were more fully clothed than these Varga girls? A. No, I

Channing Pollock—~~for Respondent~~—Cross.

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shouldn't say more fully clothed. I should say as fully clothed. There was a scene from one of the Follies which was called "The March of the Nations" in which the girls were so clothed that they found it difficult to walk and they had to subtract some of the clothing. On the other hand, five or six or seven years after, nudity became very common in every theatre in New York and Ziegfeld put on a Follies on the roof of the Amsterdam, and in it was a scene that we used to call "Living Pictures", staged by Ben Allen, in which the girls wore practically nothing, but that was five years after and that became very common in every musical comedy in New York.

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Q. Mr. Pollock, hasn't the theatre been notorious as a pioneer in obscenity? A. It certainly has not. It has not even been notorious as a follower.

Q. Would you agree that in times past most women parading upon the stage were looked upon as low and having an immoral character? A. Yes, there was a time. I recently gave the Library of Congress a diary written by my wife's great, great, great grandfather in which he alludes continually to the fact that even then in the early part of the 18th century he and his companions were regarded as rogues and vagabonds. They were not rogues and vagabonds, and the standard of morality on the stage is much higher than in ordinary life.

2286

An aunt of mine used to keep a scrapbook as to the misconduct of actors and one as to the misconduct of clergymen, and the one as to the misconduct of clergymen was much thicker.

Q. You wouldn't think that that would be accounted for by reason of the fact that the misconduct of clergymen would have more news value than that of actors? A. I wouldn't think it would. For instance, when a woman is caught

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soliciting on the street and is asked her profession she usually says that she is an actress and the newspapers set her down as an actress. Some of the finest and most honorable people I know are in the theatre and some of them happen to be chorus girls.

2287

My wife's family is one of the oldest theatrical families in America, and her standards are so Comstockian that sometimes it leaves me aghast.

Q. Would you say that the trend in obscenity now is backward and downward or upward? A. I am not quite certain as to your definition of obscenity. I should say that the trend toward frankness is very great and the reason I stopped participating in a crusade that was put out of existence, not by censorship, was because suddenly I awoke to the fact that times have passed me, that they were very different from what they used to be and that people were judging these works in comparison with the times.

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I personally think that probably the greatest help to real morality, fundamental morality, possibly is an approach to our present frankness. I think nothing is more conducive to immorality than a certain amount of inhibition, a certain kind of whispering campaign. I don't think there is any comparison between the state of mind produced by our common expressions today and the state of mind of a certain group of men who would go down to 23rd Street in the hopes of seeing the women's skirts blowing about. In those days I think the state of mind was conspicuously evil when grown men could go down to see a woman's ankle, whereas today they don't even look about.

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Q. In other words, Mr. Pollock, you are for more frankness than we have now? A. I don't think the question of frankness is the important thing. I think the question of intent is the important thing.

Channing Pollock—for Respondent—Cross.

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Q. Well, just what do you mean by that? A. Well, I was just about to give you an illustration. One of the most obscene, to my view, which does not necessarily mean that it was obscene, was an advertisement in last Sunday's Times book review for a book called "Chicken Every Sunday", which is a very popular book. It reproduced part of the first page of that book, and the first two sentences, taken as part of the context, I thought were very, very objectionable, very coarse, but in this reproduction those sentences are played up in type that high (indicating) while the rest of the page is agate.

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Now I say the intention of that makes it an obscenity. I should say that most of the motion picture advertisements were obscene not because they display the female form, because that is familiar to most of us, but because their intent is to pander.

Q. How would you describe or define the average normal individual with respect to indecency, obscenity, and filth? A. It is rather a large order. I should say that the normal individual regards sex very much as he regards beef steak: as essential and sometimes desirable but not as a thing to be discussed all day long and to create a certain sub-normal reaction.

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Q. You approach this problem, do you not, Mr. Pollock, with the attitude of a writer and dramatic critic and a playwright? A. I should say that my activities over the past few years make me approach it rather as a person interested in the public good. After all, I have not written a play for more than ten years and shall never write another one. I have no longer any association with the theater. My present activity is commenting on the daily life of people, the government, and so on. My only magazine contact is a contract for a series of essays of which I have written near-

Channing Pollock—for Respondent—Cross.

ly a hundred on, let us call it, common sense living and the morals. It has been the most successful thing that I have ever done. I am just about to make another contract for their extension with another magazine.

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I should say for ten years I have been rather a commentator on life than a dramatist or a theatrical man. I regard it as a rather high compliment that nowadays when I am introduced to people I am introduced as a dramatist, but most of the citations that I have received ignore that fact. My present activities are not connected with the theatre, not that I am not very proud of the connection.

Q. You think that your attitude toward matter of this sort we are speaking of here is the same as that of the average normal individual who walks the street and is able to buy a magazine from a newsstand? A. I should say exactly.

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Q. Are you familiar with Morris Ernst's book "The Censor Marches On"? A. Very familiar.

Q. Do you subscribe to the statements made by Mr. Morris Ernst in that book to the effect that so far as the mailability feature of the Postal Obscenity Statute is concerned that it should be allowed to continue and that enforcement be upheld? A. I should say that all censorships are dangerous, and throughout all history almost every censorship has wound up by being used for ulterior reasons and to suppress reason and thought.

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I should think that a proceeding of this sort, if it is sustained, might be one of the most dangerous things that would happen in the United States.

Mr. Bromley: You mean, I take it, based on this material, Mr. Pollock?

Channing Pollock—for Respondent—Cross.

2296

The Witness: Based on this type of material. We have now three men here of obvious intelligence and understanding of literature. It is quite possible to have a board that has not that kind of an understanding. You can't consider these things in relation to the men who are trying them at this moment. Anything is possible, any extreme is possible.

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Censorship has been used again and again as a political power. When the motion picture of "The Fool" was to be released in Philadelphia the Board of Censorship objected to its being released although the play had been advocated and urged by every church in the country, including the Catholic Church. When I went over the thing I discovered that the real reason they had objected to it was because I had spoken of the 12-hour day in the coal mines of Pennsylvania. Another thing, Anita Loos once told me that she had written a line about a mayor, in a derogatory way, and Mayor Hylan wouldn't allow the play to open until the line was taken out. It is an extremely dangerous thing.

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Q. Mr. Pollock, would you say that the determination of whether material is designed for the dissemination of information of a public character warranting a subsidy which enables the publication to exist is a matter of censorship?

A. I should say not properly. I should say that the fact that I gave a certain sum of money, a rather large sum, to the New Theater in New York did not empower me to say that the New Theater must not do a play of Congreve because it was objectionable from our present standards of morality.

Q. I believe you stated that obscenity is purely a state of mind of the beholder? A. I say the kind of obscenity that is not immediately identifiable by any policeman.

Channing Pollock—for Respondent—Cross.

Q. That is exactly the philosophy that is expressed in Mr. Ernst's books, isn't it? A. No. Mr. Ernst says there is no such thing as obscenity, which I don't think is true. Mr. Ernest belongs to a new class of liberals who are a little bit too liberal for me.

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Q. And you think Mr. Avery Hopwood, with whom you wrote, helping you in collaboration, would subscribe to that? He wrote a number of bedroom farces of a risque character, did he not? A. At least I don't think he wrote it from that standpoint, although it is possible. Hopwood was one of the most interesting types of disintegration that I saw. When he wrote "Clothes" he just graduated from the University of Michigan and he was one of the most remarkable men I ever saw. He wrote many plays of the same type. I don't think I ever saw a man so completely go to pieces as he did. Toward the end of his life he really sent out some remarkable work, but I don't think any of his farces were of a nature to excite any comment today.

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When I was dramatic critic on the Washington Times we had a wave of those farces, like "The Turtle." There was the most enormous outcry about those plays, and yet today you could produce any one of them without anyone doing anything more than going to sleep.

I remember one play in New York called "The Turtle". There was an awful outcry about the fact that Sadie Martineau disrobed and threw her clothes over a screen on the stage. She was standing offstage and threw her clothes on a screen, and in the minds of many of the audience that was quite a thing to do and there was an outcry raised and a policeman was sent back stage to do something about it and when he got there Sadie Martineau was sitting in the dressing room talking to me while the property man took the clothes out of a basket and threw them over the screen. I

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Channing Pollock—for Respondent—Cross.

2302

should say that what Miss Martineau did was in the mind of the beholder and not in the play.

Q. Mr. Pollock, you said, I believe, that you would not use the words "son-of-a-bitch" in certain company. Is that right? A. Quite right. Personally, I wouldn't use it in my writings but I don't impose my standards on every other writer.

Q. What is this "certain company" that you wouldn't use it in? A. I might use it before clergymen of a certain intellectuality and liberality. I wouldn't use it before some \$900 a year parson in Mississippi or Alabama.

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That, by the way, is a comment on what I mean by things being a reflection of current customs, and so forth.

I would use a great many words in a sophisticated drawing room or a drawing room of university people.

Although, I find I am behind the times at that. I lectured at Wellesley College one time. I had done the lecture three hundred or four hundred times, and I caught myself saying "The Well of Loneliness", and I thought "Good Heavens, I am in a girls' college." I made no further reference to the "Well of Loneliness".

The first question asked by an angel-faced child was: "From your reference to the 'Well of Loneliness' are we to understand that you don't regard sexual perversity as a proper topic for literature?"

She said that in the presence of the whole faculty of Wellesley University and nobody thought it remarkable.

Q. Can you give us the names and locations of beaches on which you see women clad as scantily as some of these Varga girl drawings? A. Any beach in America. I live at Shoreham, Long Island, which is opposite Long Island University, which is a coincidence, and I own my own beach. A large section of the beach is owned by people down there, and a large section is not.

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I would not be too sure about this because, unfortunately, I don't notice as I did twenty years ago, but I think it has been a long time since I have seen any young girl on the beach with more than what we commonly call a bra and what burlesque people call the G-string.

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Q. Mr. Pollock, you will recall some of the pictures have very transparent clothing and nothing underneath. A. Yes, I do. I don't think there is any revelation that is uncommon about it.

Q. I see. You see that sort of revelation on the beaches that you refer to? A. I have a young daughter and am fairly en rapport with the customs of the day, and I believe most women today when they go out to dinner wear a dress of rather sleazy material with either nothing under it or a thin shift underneath it. And I have never seen a drawing room thrown into orgiastic rhapsodies over it.

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Moreover, there was considerable disturbance at Rockaway Beach about people wearing the bathing costumes away from the beach and finally it all died down and the legal authorities overlooked it.

In my own community, which is certainly one of the most decent communities in America, everybody wears beach costumes to the post office to get the mail. Maybe the Post Office ought to do something about that.

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Q. Will you look at the June Varga girl in the January issue? On what beach have you seen a costume of that sort that is, an American beach? A. It is not a beach costume. I can take you to twenty ballrooms in New York where that is commonplace.

Chairman Myers: I think we are looking at different pictures.

The Witness: January.

*Channing Pollock—for Respondent—Cross.*2308 *By Mr. Hassell:*

Q. June. A. I shouldn't say you would see quite that on any beach but I do say that nothing which is not permissible on a beach should not be permissible in art. After all, bathing isn't the criterion of American art, is it?

Q. Now, look at the August picture on that calendar. On what beach have you seen costumes of that sort? A. I have not seen that on any beach. I have not seen the Greek slave on any beach, but I don't think we ought to bar the Greek slave.

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I am not contending that only beach costumes are permissible in art.

Q. But you did on direct say that these Varga girl costumes are no more daring or scanty than costumes you see on the beaches. A. I shouldn't say they were. It is a degree so fine that I think it takes a certain abnormality of mind to discover it.

The beach costume reveals all the curves and so forth. I suppose it does. I can't say I ever noticed it too closely. So does this. So what?

I think under certain conditions concealment, as I said before, is more obscene.

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When I was a boy in Washington, when you pasted a picture of a woman in short skirts on a billboard, you had to paste a piece of white paper over the woman's legs, and whenever you came to one of these pictures pasted on a billboard you came to twenty small boys trying to take off the paper to see what was underneath it. If there hadn't been any white paper there you would not have any small boys trying to tear it off.

Q. Will you refer to the Varga girl picture in the September issue of Esquire, at page 38? Would you say that

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is a typical beach costume as is worn on beaches? A. No. I repeat, I can't regard the bathing costume as the only criterion of art. I judge from this picture that women have mammary glands and are bipeds, but I don't think there is anything remarkable about that.

Q. You may, then, want to change your testimony or direct to the effect that these Varga girls are clad no more scantily than women seen on the beaches of America? A. I wouldn't want to change my testimony. I think it is simply a question of how literally you take that.

Although there is a certain transparency that probably does not exist in beach costumes, beach costumes reveal not much less than this. In fact, we have had an outbreak of nudist colonies lately in which most of the people wear nothing.

Q. Do you think that is proper? A. I do not. I think it is a matter of interest. If I want to go bathing without clothing I propose to go bathing without clothing, but I haven't the exhibitionist complex that makes me want to do it in company.

Q. How do you regard nudist books advocating nudism, having nothing in their texts of an objectionable character, simply being an argument for nudism, but having illustrations showing pictures of men and women in the nude?

A. I think that is a matter of interest. I know one nudist magazine that used to be published in Germany that I thought was absolutely all right because it was the result of absolute fanaticism of the doctors for sunlight and air, and so forth.

I think the evil in most of our nudist magazines is because they are trying to get out from under the law.

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Channing Pollock—for Respondent—Cross.

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Chairman Myers: Is that the Friebarte?

The Witness: Yes. It was the beginning of all the nudist movement, I suppose.

But it is a matter of intention. I can do certain things from an honest and decent intention that, therefore, become honest and decent, that if I do them for gain I should say would be rather deplorable. I do not think the human body *per se* is obscene. I think if it had been God probably would not have made it.

2315

Q. I believe you said that if there is nothing wrong about a thing, there is nothing wrong about mentioning it. **A.** Yes. I think there is something very wrong about failing to mention it.

Q. Have you reference to the bedroom or relations between man and wife? **A.** It may be indecent. I wouldn't call it obscene. If it were you and I would not be here, sir.

Q. But you think it is perfectly wrong to go into minute details with what transpires in the marriage bed, do you? **A.** I should think it would depend upon the publication and upon the reason for doing it. It is all a matter of intent.

2316

Q. But you did say if there is nothing wrong about men sleeping beside their wives, there is nothing wrong about mentioning it. **A.** Mention and obscene revelation are two different things.

For example, there are innumerable books circulated as to connubial felicity. I have so much connubial felicity I haven't had to read them. I have no objection to them. They are freely circulated, written by medical men.

I should say they are probably quite proper, but I should say if I wanted to do so—and I don't—I might write a description of what goes on in the marriage bed that would

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be very obscene and improper, and I think then the obscenity would be in my mind and not in what happens in the marriage bed.

Q. You referred to a number of matters called to your attention in Esquire as being true reports.

Is your idea that truth or falsity determines whether or not a matter is salacious, indecent, obscene, lewd or lascivious? A. I think it is a material consideration.

Q. If it be factual, then it would not be objectionable from an obscenity standpoint? A. No, I wouldn't go so far as that. I regard the last chapter of Joyce's "Ulysses" as entirely objectionable. I didn't regard it as material for censorship because I don't believe in censorship. I think if you will educate, you will do a great deal more than you will by censorship.

But one of the most learned courts of the country decided I am wrong, and held there was nothing wrong with that chapter. I personally thought it was offensive and raised a rumpus in Emanuel Hirsch Mt. Sinai Synagogue in Chicago. Any number of people said I was evil-minded and so forth.

Q. You said you don't believe in censorship and you would not have censored that? A. I don't believe in censorship any more than I believe in prohibition. I believe in decency and I believe in moderation.

It is a curious thing that pent-up powder explodes and loose powder merely burns. It is a very dangerous thing to pen up these emotions.

Q. The part of "Ulysses" you have reference to is Mrs. Broome's soliloquy? A. It didn't make so much impression that I remember it. I have reference to the part where some man or woman was in a toilet and cogitating at the time.

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Channing Pollock—for Respondent—Cross.

2320 As I say, one of my bases of judgment in these matters would be the depth of the impression made upon me.

I read "Ulysses" a great many years ago and I understood very little of it.

Q. You found it a tiresome book? A. I found it a boring beyond belief book. I think those books come under the head of what Alexander Pope calls the dulleries of art. I think they are affectation and I think the people who do them are contemptible beyond words.

Q. Doctor, you referred to the "Star and Garter Blues" as a musical comedy. A. I referred to the "Star and Garter" as a musical comedy. I don't mean to quibble with you about the word.

Q. Pardon me. Would you say that the characterization of it as \$4.40 burlesque would be incorrect? A. Well, most of the sketches in the play are what in burlesque used to be called black-outs. I am rather an authority on burlesque. I covered burlesque in Washington for a good many years. There was Kernan's Theater—no one here is old enough to remember that.

Most of the sketches are sketches that have been done in burlesque for fifty years or more. The sketch where someone pours water on—I have forgotten his name for the moment—is probably old as the negro minstrel show.

But there you have a gradation, a refinement as it were, a polishing up of these things for the \$4.00 audience.

Not that I think burlesque is essentially wrong. I used to go to burlesque shows in New York chiefly because I sat next to Mr. Justice Holmes, and I don't think either of us was notably corrupted by the performance. At least, Mr. Justice Holmes was not.

Q. This show we are speaking of "Star and Garter", consists chiefly of strip teases and some dances that could be

Channing Pollock—for Respondent—Cross.

called orgiastic or erotic dances? A. I think all dances are erotic dances. I think that is the purpose of dancing, but I insist that the erotic is not necessarily wrong. I think it is rather fine, myself.

2323

Q. Doctor, would you say that the exploitation of sex continually as a magazine policy is contrary to the development of good, sound literature? A. No. I should say the exploitation of sex goes through all literature and without it you would have no literature.

Q. But the magazine which consistently and persistently plays up sex, do you think that is a good thing from a literary standpoint? A. I think from an artistic standpoint you can have too much of anything, but the two-muchness has nothing to do with morals. I don't see anything wrong with sex. In fact, I think it is a great institution. The decision that sex must be wrong must be tremendously surprising to God.

2324

Q. You don't admit that questionable pictures and questionable stories, from a moral standpoint, may have a deleterious effect upon youth or impressionable persons? A. In the first place, I think you have got to decide what is questionable. I think you and I know that certain post-cards which you and I know are sold in Paris, and which we suspect are sold in New York, have a very bad effect. I doubt that they would affect anybody that was not affected beforehand, however, because I don't think anybody who was not affected before buys them, except censors, of course.

2325

But I don't think that the mere fact that a thing deals with sex can have an evil effect. What is evil is so much more subtle than the censorial mind.

For example, Cardinal Hayes and I during a discussion-

Channing Pollock—for Respondent—Cross.

2326

were in complete agreement that the national evil of the moving picture was a matter of gross materialism. For instance, the idea that no man has justified living who does not end his life in a 12-cylinder car and living in a home that looks like the Grand Central Palace, is a bad thing. I think it is like the man with the skinny mustache and the Jap valet bringing in the girls, but the state of dressing of the girls has nothing to do with it.

I think it is unfortunate that we regard the girls with the lacquered finger-nails as the glamour girl. But that has nothing to do with sex.

2327

If I were the Post Office, which I have no desire to be, believe me, the first thing I would bar are these 50 or 60 or 70 magazines distributed to children, Superman and so forth. These pernicious and rather painful comics have a tendency to develop a wrong state of mind and are very bad art. But I disagree with some of our best educators in believing that no one who acquires a taste for that sort of stuff would ever acquire a taste for art.

But that is my personal opinion and I don't urge it on anyone else.

Mr. Hassell: That is all.

Mr. Bromley: That is all.

2328

(Witness excused.)

Mr. Bromley: Mr. Donnelly.

James C. Donnelly—for Respondent—Direct.

JAMES C. DONNELLY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

2329

Direct Examination by Mr. Bromley:

Q. Will you give your name, please? A. James C. Donnelly.

Q. Where do you live, Mr. Donnelly? A. Pasadena, California.

Q. And your business is what, sir? A. I am President of the Pacific Coast Independent Magazine Wholesalers Association and a magazine wholesaler.

2330

Q. Will you tell us a little more in detail just what your business is? A. Our business as an Association is made up of 80 wholesalers from the Far Western States and the object of the Association is for the betterment and improvement of independent distribution.

Independent distribution is a system of distribution which exists in 725 or 726 cities in the United States. There are two systems of distribution, one the independent system and the other is the American News Company.

Q. Now, will you tell us a little more about your own business as distinguished from the activities of the Association? A. My own business is the distribution and sale of magazines to various retail outlets in Pasadena and the surrounding community, of which we take in about 40 towns and cities.

2331

We represent seven of the largest publishers in America.

Q. Will you name them, please, and the magazines which you distribute? A. We distribute approximately 300 different titles. We represent the Curtis Publishing Company, who publish the Saturday Evening Post and the Ladies' Home

James C. Donnelly—for Respondent—Direct.

2332 Journal and we are national distributors for Esquire and Coronet.

We represent the Science-McCalls Corporation and distribute McCalls, Red Book, Popular Science and Reader's Digest.

We represent the International Circulation Company, who publish and distribute Cosmopolitan, Good Housekeeping, Harpers Bazaar, Town and Country, and various screen magazines and so forth.

2333 We represent the Independent News Company, who publish a line of comics, The Cable News Company, who publish various publications, the MacFadden Publications, who publish True Story, True Confessions and Liberty, and various other small distributing companies.

Q. When did you begin to distribute the magazine Esquire?
A. The franchise was taken over in June of 1940.

Q. About how many copies do you distribute a month of Esquire? A. In our agencies we distribute about 5,000 copies.

Q. Would you tell us something about the nature of the retailers who purchase these magazines for sale to the public? Who are they? A. The biggest retail accounts that we have that sell Esquire are the larger and better department stores such as Bullitt's, the May Company, the Broadway Department Store, the high-class book and stationery stores, the airport which is a very big outlet.

We sell approximately 60 per cent of our Esquires through these higher class stores and outlets, 20 percent are sold through Army camps, post exchanges and Army hospitals, and the balance are sold through the smaller stores in the outlying sections, some of them very good sections, by the way.

Colloquy.

Mr. Hassell: I object to this line of testimony, if the Board please. This is similar to matter that has been held by the Federal courts to have no bearing on questions of this sort.

2335

Chairman Myers: I was wondering, Mr. Bromley, what your purpose is with this line of testimony.

Mr. Bromley: As I understood Mr. Hassell, he has specifically made the charge before this Board that this magazine is a hush-hush magazine and that it is the kind of magazine that is surreptitiously distributed and not handled by decent people, and not regarded in the business as a decent, clean magazine.

2336

I offer this as testimony to show the character of our distributors, our retailers, and our purchasers, and what efforts they make before they handle magazines to determine their character, and what the opinion of the trade is as to the character of this magazine with comparison to others, such as the Saturday Evening Post—

Mr. Hassell: I have not made any contention that the distribution of this magazine is hush-hush, and the record will so show.

And the case which I referred to in which matter was sought to be introduced was U. S. v. Levine; 83 Fed. (2nd) 156.

2337

The court held that the exclusion of lists of purchasers of books was correct.

Mr. Bromley: I am not trying to show lists of purchasers. I am trying to show how the magazine is regarded in the wholesale distribution field, a part of the public.

Colloquy.

2338

Chairman Myers: I had in mind the Levine case. Having that case in mind it is the view of the Board that the objection should be sustained.

2339

Mr. Bromley: Exception. And I now offer to prove by this witness that he and his Association uniformly and consistently make careful investigation before they handle any publication in the magazine field, that it is their policy not to handle any magazines which in their opinion the public regards as indecent, filthy, lewd, obscene or lascivious; that they made such an investigation of the magazine Esquire, that they concluded it was not a hush-hush or obscene magazine and, in his opinion, it is properly classified with such magazines as the Saturday Evening Post, Cosmopolitan, Red Book, Liberty, Reader's Digest and so forth; that it is not, in his opinion, in the girl gag class and is not regarded by his Association or himself as a sexy magazine.

2340

I offer to prove by him that in his area a system of censorship exists which exercises very close control through police departments of the cities in which he distributes this magazine, over the type of periodical publication circulated, that the magazine Esquire has never been on any proscribed or censored list in any part of his territory, that it is approved by such representatives as the Pasadena Police Department, that it is approved by women's civic leagues and parent-teachers associations and various church organizations.

Further, that the magazine Esquire, in his territory has never been on any disapproved list, that the magazine is not classed as a hush-hush magazine.

Colloquy.

that in his territory it regularly appears in all important clubs and waiting rooms of prominent physicians, professional offices, and in the better and more decent homes of the community.

2341

That he has never received a single complaint at any time in his capacity as distributor, against Esquire or anything contained therein.

And another thing, I offer to prove by this witness that in cooperation with the late Captain Charles Paddock, he conducted in January and February, 1943, a Varga and Esquire armed forces campaign in which magazines have been solicited for shipment to the armed forces abroad, and that the U. S. O.s and local citizens in his area formed committees for cooperating in this movement and that a club was formed called the "Send More Esquires Club" and thousands of magazines thus collected were sent out to our armed forces.

2342

That he is generally familiar with the magazine, has it in his home and has had for years before he distributed it, and it is read regularly by his family, including children.

Chairman Myers: Is that a new question you are presenting here, or is that part of your offer of proof?

2343

Mr. Bromley: That is my offer of proof.

That is all, Mr. Donnelly.

Mr. Hassell: I have no questions.

(Witness excused.)

Mr. Bromley: Mr. Orr.

Robert W. Orr—for Respondent—Direct.

2344

ROBERT W. ORR, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

Q. Will you give the Board your full name, please, sir?

A. My full name is Robert W. Orr.

Q. And where do you live? A. New York City.

Q. What is your address, please? A. My home address?

Q. Yes. A. 169 East 78th Street.

Q. What business are you in? A. The advertising business.

Q. Are you associated with some firm? A. I am a partner of Lennen & Mitchell advertising agency.

Q. Lennen & Mitchell? A. Yes.

Q. And the firm of Lennen & Mitchell is a firm of advertising agents. Is that right? A. That is correct.

Q. Describe their business, briefly. A. We handle the advertising for quite a few national advertisers, that is, all phases of their advertising, display, radio, magazines and newspapers.

Q. Will you name some of the representative accounts that are handled by your firm? A. We have the accounts of Jergens-Woodbury, and Lehn & Fink for Lysol disinfectant, and Pebecco tooth paste, Bendix Aviation Company, Tide-water Oil, Carstairs and Calvert whiskies, and P. Lorillard Company, all brands excepting Old Gold cigarettes.

Q. Now, in the course of a year, how much advertising business, expressed in dollars, does your firm handle? A. It varies from \$8,000,000 to \$12,000,000 a year.

Q. When did you yourself first go into the advertising business? A. About 28 years ago.

2345

2346

Robert W. Orr—for Respondent—Direct.

Q. And what experience have you had? A. Well, it has been a rather diversified experience, having started as an office-boy from the bottom in a small agency, learning various phases of the business over a period of years. I have worked in most every department in an agency.

2347

Q. When did you go to work for Lennen & Mitchell? A. About 20 years ago.

Q. And how long have you been a partner of the firm? A. About 12 years.

Q. Can you give us an estimate of the amount of advertising that firm has handled during the time you have been with it in terms of dollars? A. I would say over that period in excess of \$150,000,000 worth of billing.

2348

Q. During the time you have been in the advertising business have you observed and become familiar with the advertising content of magazines and the trends in magazines? A. Very definitely. That has been part of my job, to do that.

Q. And have you at my request examined the current issues of such magazines as the Woman's Home Companion, Ladies Home Journal, Vogue, Harper's Bazaar, Cosmopolitan, Saturday Evening Post, Look, Colliers and the New Yorker, in order to appraise the present day standards in advertising as far as illustrations and text are concerned?

A. Yes, I have.

Q. And have you, Mr. Orr, at my request, selected various advertisements in these magazines, which you consider as representative of present day standards of advertising and their respective categories? A. Yes, I have.

2349

Q. I show you the magazine Vogue for May, 1938 and direct your attention to an advertisement on page 123, and ask you whether or not, in your opinion, that advertisement is typical of standards then and now in the field of cosmetics?

Robert W. Orr—for Respondent—Direct.

2350

Chairman Myers: May that be marked for identification so we may refer to it that way?

Mr. Bromley: Before you answer that question, may I have this magazine marked for identification?

(The document above referred to was marked Respondent's Exhibit No. 20 for identification.)

By Mr. Bromley:

Q. Can you answer the question? A. The advertisement you showed me is typical of that type of advertising.

2351

Mr. Bromley: I offer it in evidence.

Chairman Myers: Let Mr. Hassell see it.

Mr. Hassell: I object.

Mr. Bromley: You haven't seen it yet.

Mr. Hassell: I object to this line of testimony.

Manifestly this advertisement occurs in a woman's magazine. Vogue is a well-known woman's magazine. It is not at all comparable with the matter the Board has under consideration. I think it has no pertinency and no value whatsoever in this proceeding.

2352

Chairman Myers: The objection is overruled. Respondent's Exhibit 20 is received in evidence.

(The document heretofore marked Respondent's Exhibit No. 20 for identification was received in evidence.)

Mr. Bromley: I ask that the issue of Vogue for January 1, 1940, be marked for identification.

(The document above referred to was marked Respondent's Exhibit No. 21 for identification.)

Robert W. Orr—for Respondent—Direct.

By Mr. Bromley:

2353

Q. Is this advertisement appearing in Respondent's Exhibit No. 21 for identification, on the inside of the first page, of Cannon's towels, typical of the advertising in that field as of that time? A. Very typical.

Mr. Bromley: I offer it in evidence.

Mr. Hassell: The same objection.

Chairman Myers: Same ruling.

(The document heretofore marked Respondent's Exhibit No. 21 for identification was received in evidence.).

2354

Mr. Harding: We would like to have a stipulation, Mr. Hassell, that for any of these magazines that are offered we may substitute photographs or photostats, so that the original magazines may be returned to the publisher. In some instances it was not possible to get duplicates.

Mr. Hassell: I imagine we can agree to that if you will produce a photograph that will show the colors and so forth.

Mr. Harding: We can do that.

Chairman Myers: Off the record.

2355

(There was a discussion off the record.)

Mr. Bromley: I ask that Vogue for May 1, 1943, be marked for identification.

(The document above referred to was marked Respondent's Exhibit No. 22 for identification.)

Robert W. Orr—for Respondent—Direct.

2356

By Mr. Bromley:

Q. I show you in Exhibit 22, page 21, what purports to be an advertisement for "Tabu, the forbidden perfume"; and ask you whether that ad was carried in practically all of the class magazines of that time? A. Yes, that is a very typical advertisement for Tabu. It has an illustration done by John Le Gatta, one of our best illustrators.

Mr. Bromley: I offer that magazine in evidence.

Mr. Hassell: I object to this.

2357

Chairman Myers: Let the record show that Mr. Hassell objects to the introduction of all these magazines and that the objection is overruled.

(The document heretofore marked Respondent's Exhibit No. 22 for identification was received in evidence.)

Mr. Bromley: I ask that the issue of Vogue for July 1, 1943, be marked for identification.

(The document above referred to was marked Respondent's Exhibit No. 23 for identification.)

2358

Chairman Myers: How many Vogue magazines do you have?

Mr. Bromley: Only a couple more.

Chairman Myers: All right.

By Mr. Bromley:

Q. I show you on page 4 the advertisement of Shaleen hosiery, and ask you whether that is a typical hosiery ad-

Robert W. Orr—for Respondent—Direct.

vertisement carried by most of the high-class magazines during the year 1943? A: It is typical of the advertising that they are doing now. 2359.

Mr. Bromley: I offer Respondent's Exhibit No. 23 in evidence.

Chairman Myers: It may be admitted.

(The document heretofore marked for identification Respondent's Exhibit No. 23 was received in evidence.)

Mr. Bromley: I ask that Vogue for June 15, 1943, be marked for identification. 2360

(The document above referred to was marked Respondent's Exhibit No. 24 for identification.)

By Mr. Bromley:

Q. I call your attention to an advertisement of Cole of California and ask you whether or not this is a typical advertisement of bathing suits which was run, it or similar ones, not only in Vogue for 1943 but the other high class magazines? 2361.

Mr. Hassell: At what page is that?

Mr. Bromley: Page 11.

The Witness: It is typical of the bathing suit advertising done by Cole and Jantzen and other houses with that type of merchandise.

Mr. Bromley: I offer in evidence Respondent's Exhibit 24.

Chairman Myers: It will be received.

Robert W. Orr—for Respondent—Direct.

2362

(The document heretofore marked Respondent's Exhibit No. 24 for identification was received in evidence.)

Mr. Bromley: I ask that Harper's Bazaar for December, 1940, be marked for identification.

(The document above referred to was marked Respondent's Exhibit No. 25 for identification.)

By Mr. Bromley:

2363

Q. I call your attention to Respondent's Exhibit No. 25, an advertisement appearing on page 103, of perfumes by Orloff, and ask you whether that is a typical perfume advertisement of the present day? A. Yes, it appears to be very typical. It is a very bad ad.

Mr. Bromley: I offer in evidence Respondent's Exhibit 25.

Chairman Myers: By the way, Mr. Bromley, in this Respondent's Exhibit 24, are the portions you offer those marked with the tab?

Mr. Bromley: I have only offered one page.

Chairman Myers: That is what I thought.

Mr. Cargill: Mr. Bromley, is this what you have in mind (indicating)?

Mr. Bromley: Yes.

Chairman Myers: Respondent Exhibit 25 is admitted in evidence.

(The document heretofore marked Respondent's Exhibit No. 25 for identification was received in evidence.)

Robert W. Orr—for Respondent—Direct.

Mr. Bromley: I ask that Harper's Bazaar for March 15, 1942, be marked for identification.

2365

(The document above referred to was marked Respondent's Exhibit No. 26 for identification.)

By Mr. Bromley:

Q. In Respondent's Exhibit 26 is the advertisement appearing on page 77 for Perma-Lift brassieres by Hickory, a typical advertisement for that article of clothing? A. Yes, it is typical of what the brassiere people are doing.

2366

Mr. Bromley: I offer in evidence Respondent's Exhibit 26.

Chairman Myers: It may be received in evidence.

(The document heretofore marked Respondent's Exhibit No. 26 was received in evidence.)

Mr. Bromley: I ask that Harper's Bazaar for October, 1943, be marked for identification.

(The document above referred to was marked Respondent's Exhibit No. 27 for identification.)

2367

By Mr. Bromley:

Q. In Respondent's Exhibit 27 I call your attention at page 6 to an advertisement of Tabu perfumes and ask you whether that is representative of perfume advertising in 1943? A. It is certainly representative of Tabu advertising. I wouldn't call it quite representative of all perfume ads because most of them don't use photographs. That is an actual photographic model.

Robert W. Orr—for Respondent—Direct.

2368

Q. Was this ad or an ad similar to this, carried in 1932 in all high-class magazines? A. Oh, yes, by Tabu.

Mr. Bromley: I offer Respondent's Exhibit 27 in evidence.

Chairman Myers: It may be received in evidence.

(The document heretofore marked Respondent's Exhibit No. 27 for identification was received in evidence.)

2369

Mr. Bromley: I ask that the New Yorker for October 22, 1932, be marked for identification.

(The document above referred to was marked Respondent's Exhibit No. 28 for identification.)

By Mr. Bromley:

Q. Have cigarette advertisements for years featured pictures and photographs of women in various states of dress? A. They have, yes, bathing girls, dancing girls, and that sort of thing.

Q. I show you Respondent's Exhibit 28 for identification, the last page thereof, being a Lucky Strike advertisement, and ask you whether that ad was carried as far back as 1932? A. Yes, we also did a series like it called "Kissables" for Old Gold cigarettes. The idea was to smoke Old Gold cigarettes and keep your breath fairly sweet.

The idea was at that time that Old Gold did not contain any of the flavoring ingredients. It was pure tobacco and there was a basis for that argument.

Q. In Respondent's Exhibit 28, this is an oil painting of The Raid On The Sabine Women and portrays the capture by

2370

Robert W. Orr—for Respondent—Direct.

Roman warriors of Sabine villages for the express purpose of carrying off their women. A. That is right.

2371

Mr. Bromley: I offer that in evidence.

Chairman Myers: It may be received in evidence.

(The document heretofore marked for identification Respondent's Exhibit No. 28 was received in evidence.)

Chairman Myers: At this point we shall adjourn as usual to 1:30.

2372

(Whereupon, at 12:05 o'clock p. m., the hearing was adjourned until 1:30 o'clock p. m.)

AFTERNOON SESSION

(The hearing was resumed, pursuant to the adjournment, at 1:30 o'clock, p. m.)

Chairman Myers: All right, we will resume.

2373

ROBERT W. ORR, resumed the stand and testified further as follows:

Direct Examination (Continued).

Mr. Bromley: I ask that the New Yorker for July 31, 1943, be marked for identification.

(The document referred to was marked Respondent's Exhibit No. 29, for identification.)

Robert W. Orr—for Respondent—Direct.

By Mr. Bromley:

2374

Q. Referring to page 9 of Respondent's Exhibit 29: for identification, would you say that the advertisement there of the Schiaparelli hosiery advertisement or stockings is a typical hosiery advertisement? A. It is an advertisement of liquid leg lotion. It is very typical. It happens to be one of our own ads.

Q. That advertises leg lotions for painting on stockings
A. For painting on the bare leg in place of stockings.

Mr. Bromley: I offer this exhibit in evidence.

2375

Mr. Hassell: Same objection.

Chairman Myers: It is admitted.

(The document heretofore marked Respondent's Exhibit No. 29, for identification, was received in evidence.)

Mr. Bromley: I ask that this New Yorker for April 24, 1943, be marked for identification.

(The document referred to was marked Respondent's Exhibit No. 30, for identification.)

2376

By Mr. Bromley:

Q. In that exhibit for identification, No. 30, I call your attention to page 72, to the White Rock advertisement, and in particular to the picture of Gypsy Rose Lee contained in that ad. Is that a typical form of advertising for products such as White Rock? A. Yes, a lot of the advertisers use movie and theatrical stars for testimonials and illustrations.

Robert W. Orr—for Respondent—Direct.

Mr. Bromley: I offer this exhibit in evidence.

2377

Mr. Hassell: Same objection.

Chairman Myers: It is admitted.

(The document heretofore marked Respondent's Exhibit No. 30, for identification, was received in evidence.)

Mr. Bromley: Mark for identification the Saturday Evening Post for September 5, 1942.

(The document referred to was marked Respondent's Exhibit 31, for identification.)

2378

By Mr. Bromley:

Q. I show you Respondent's Exhibit No. 31, for identification, the Saturday Evening Post, a Palmolive Soap ad featuring a lady in the bath tub. Would you say that was typical or characteristic of soap advertisements? A. I would say it is very typical of soap ads. We, some years ago, ran a whole series of nudes to convey the idea of Vitamin D sunshine which we had incorporated in our soap. Very beautiful figures all done of models in the nude. We never had one complaint from any of the readers.

2379

Mr. Hassell: What page is that?

Mr. Bromley: Page 8.

I offer in evidence Respondent's Exhibit 31, for identification.

Mr. Hassell: Same objection.

Chairman Myers: Admitted.

(The document heretofore marked Respondent's Exhibit No. 31, for identification, was received

Robert W. Orr—for Respondent—Direct.

2380

Mr. Bromley: Will you mark for identification the Saturday Evening Post for July 10, 1943.

(The document referred to was marked Respondent's Exhibit No. 32, for identification.)

By Mr. Bromley:

2381

Q. I show you Respondent's Exhibit No. 32, for identification, and call your attention to the advertisement of the Sir Walter Raleigh pipe tobacco and ask you whether the black and white cartoon drawing is typical of tobacco or pipe tobacco ads? **A.** Yes, it is. A lot of cigarette and tobacco advertisers use cartoons. We have done it ourselves.

Mr. Bromley: That is on page 90. I offer Respondent's Exhibit No. 32, in evidence.

Mr. Hassell: Same objection.

Chairman Myers: It is admitted.

(The document heretofore marked Respondent's Exhibit No. 32, for identification, was received in evidence.)

2382

Mr. Bromley: Will you mark for identification the Ladies' Home Journal for September, 1943.

(The magazine referred to was marked Respondent's Exhibit No. 33, for identification.)

By Mr. Bromley:

Q. In Exhibit 33, for identification, page 109, is an advertisement of the Cashmere Bouquet Soap entitled "What do men want anyway?"

Robert W. Orr—for Respondent—Direct.

Is that typical of soap advertisements? A. Yes, it is, it is
typical of the entire series they run.

2383

Mr. Bromley: I offer in evidence Respondent's Exhibit No. 33, for identification.

Mr. Hassell: Same objection.

Chairman Myers: It may be admitted.

(The magazine heretofore marked Respondent's Exhibit No. 33, for identification, was received in evidence.)

Mr. Bromley: Will you mark for identification this Ladies' Home Journal for July, 1942?

2384

(The document referred to was marked Respondent's Exhibit No. 34, for identification.)

By Mr. Bromley:

Q. In Exhibit 34, for identification, I call your attention to another Palmolive Soap advertisement on page 10 featuring a girl in an abbreviated bathing suit and a girl in a bath tub. Is that again typical or representative of soap ads? A. Yes, it is.

2385

Mr. Bromley: I offer this exhibit being No. 34, for identification, in evidence.

Mr. Hassell: Same objection.

Chairman Myers: It may be admitted.

(The document heretofore marked Respondent's Exhibit No. 34, for identification, was received in evidence.)

Robert W. Orr—for Respondent—Direct.

3286

Mr. Bromley: Will you mark for identification, please, the Ladies' Home Journal for August, 1942?

(The magazine referred to was marked Respondent's Exhibit No. 35, for identification.)

By Mr. Bromley:

Q. In this Exhibit 35, for identification, Mr. Orr, at page 81, is another such advertisement entitled "Is this a honeymoon or a rest cure?" Is that typical of such advertisements of the present day? **A.** Yes, it is.

3287

Mr. Bromley: I offer Exhibit 35 in evidence.

Mr. Hassell: Same objection.

Chairman Myers: It may be admitted.

(The document heretofore marked Respondent's Exhibit No. 35, for identification, was received in evidence.)

Mr. Bromley: Will you mark for identification, please, the Ladies' Home Journal for November, 1942?

3288

(The magazine referred to was marked Respondent's Exhibit No. 36, for identification.)

By Mr. Bromley:

Q. In Exhibit 36, for identification, Mr. Orr, at page 150, is an advertisement of Cheramy, a perfumer, of April Showers. Tale in which appears the nude bust of a woman. Is that a typical advertisement featuring nudes or partial nudes? **A.** Yes, it is.

Robert W. Orr—for Respondent—Direct.

Mr. Bromley: That appears at page 150. I offer in evidence Respondent's Exhibit No. 36, for identification.

2389

Mr. Hassell: Same objection.

Chairman Myers: It may be admitted.

(The magazine heretofore marked Respondent's Exhibit 36, for identification, was received in evidence.)

Mr. Bromley: Will you mark for identification this Colliers for March 26, 1938?

2390

(The magazine referred to was marked Respondent's Exhibit No. 37, for identification.)

By Mr. Bromley:

Q: In this exhibit for identification, No. 37, is an advertisement of the Seal Power Corporation of piston rings in which chorus girls in very abbreviated costumes are shown. Is that type of girl advertisement used by concerns other than soap or perfume concerns? **A:** It is quite typical of quite a few advertisers. Very often it doesn't tie up the product, as here, but it is used as a typical illustration.

2391

Mr. Bromley: I offer in evidence Exhibit 37, for identification, and call attention to page 66.

Mr. Hassell: Same objection.

Chairman Myers: It may be admitted.

(The magazine previously marked Respondent's Exhibit 37, for identification, was received in evidence.)

Robert W. Orr—for Respondent—Direct.

2392

Mr. Bromley: Will you mark for identification an issue of *Colliers* for September 18, 1943?

(The magazine referred to was marked Respondent's Exhibit No. 38, for identification.)

By Mr. Bromley:

Q. In this exhibit, for identification, 38, Mr. Orr is an advertisement for Mojud Hosiery. I show you that advertisement and ask you whether that is a typical advertisement, Mr. Orr? A. This is typical of the hosiery ads, yes.

2393

Mr. Bromley: I offer Respondent's Exhibit, for identification, 38 in evidence, calling attention particularly to page 55.

Mr. Hassell: Same objection.

Chairman Myers: It may be admitted.

(The magazine previously marked Respondent's Exhibit No. 38, for identification, was received in evidence.)

2394

Mr. Bromley: Will you mark for identification this issue of *Look* for February 23, 1943?

(The magazine referred to was marked Respondent's Exhibit No. 39, for identification.)

By Mr. Bromley:

Q. In this Exhibit 39, for identification, Mr. Orr, is another undraped ad. of Best Form at page 70. Is that typical

Robert W. Orr—for Respondent—Direct.

of the brassiere ads? A. It is typical of the brassiere ad-
vertisements.

2395

Mr. Bromley: I offer Respondent's Exhibit No. 39,
for identification, in evidence.

Mr. Hassell: Same objection.

Chairman Myers: It is admitted.

(The magazine previously marked Respondent's
Exhibit No. 39, for identification, was received
in evidence.)

2396

Mr. Bromley: Will you mark an issue of Look for
November 18, 1941, for identification?

(The magazine referred to was marked Respond-
ent's Exhibit No. 40, for identification.)

By Mr. Bromley:

Q. In Exhibit 40, for identification, is an advertisement
for Linit Laundry Starch featuring a girl in an abbreviated
costume. Is that again typical of the use of undraped
female figures in advertisements? A. I would say so, yes.

2397

Mr. Bromley: I offer Exhibit 40, for identification,
in evidence, if you please.

Mr. Hassell: Same objection.

Chairman Myers: It is admitted.

Robert W. Orr—for Respondent—Direct.

2398

(The magazine heretofore marked Respondent's Exhibit No. 40, for identification, was received in evidence.)

Mr. Bromley: Will you mark for identification, please, an issue of Look for July 15, 1943?

(The magazine referred to was marked Respondent's Exhibit No. 41, for identification.)

By Mr. Bromley:

2399

Q. In Exhibit 41, Mr. Orr, I call your attention to another Limit Advertisement appearing on page 48, being drawings of undraped female figures. Is that typical of current-day advertisements, in that field at least? A. Yes, it is typical of a lot of cartoons in advertisements.

Mr. Bromley: I offer in evidence Exhibit 41, for identification.

Mr. Hassell: Same objection.

Chairman Myers: It may be admitted.

2400

(The magazine previously marked Respondent's Exhibit No. 41, for identification, was received in evidence.)

Mr. Bromley: I offer for identification the issue of Look for October 19, 1943.

(The magazine referred to was marked Respondent's Exhibit No. 42, for identification.)

Robert W. Orr—for Respondent—Direct.

By Mr. Bromley:

2401

Q. In Exhibit 42, for identification, at page 9 is an advertisement of the Book League of America advertising novels. It reads "This amazing novel of three women * * * the men they love * * * and the love they wanted," with subtitles "Their mistake in love was in giving too much" and "She loved too late."

Will you tell me whether or not that book advertisement and some similar to that type are commonly accepted by all the high-class magazines being published today? A. It is typical of the mail order book advertising appearing in most of the publications that carry this type of advertising, such as Look, American Weekly, and magazines of that type.

Q. Now, name some others. A. This type of advertising usually runs in magazines like Look and American Weekly.

Q. What is American Weekly? A. A syndicated magazine section published by Hearst newspapers and other newspapers with a circulation of over six million copies.

Q. That is the magazine that accompanies certain of the newspapers? A. Yes, throughout the country.

Mr. Bromley: I offer Exhibit 42, for identification, in evidence.

Chairman Myers: It may be admitted.

2403

(The magazine previously marked Respondent's Exhibit No. 42, for identification, was received in evidence.)

Mr. Bromley: Will you mark for identification, please, the Saturday Evening Post of May 1, 1915?

(The magazine referred to was marked Respondent's Exhibit No. 43, for identification.)

Robert W. Orr—for Respondent—Direct.

2404

By Mr. Bromley:

Q. Do you recognize the Phoenix Silk Hosiery ad appearing on page 32 as a hosiery ad typical of the year 1915? A. It is typical of the type of advertising they did back in 1915. It is quite different from the type of stuff we are doing today.

Mr. Bromley: I offer in evidence Respondent's Exhibit 43, for identification, and call particular attention to page 32.

Chairman Myers: It is admitted.

2405

(The magazine previously marked Respondent's Exhibit No. 43, for identification, was received in evidence.)

Mr. Bromley: Will you mark for identification an issue of *Vogue* for January, 1920?

(The magazine referred to was marked Respondent's Exhibit No. 44, for identification.)

By Mr. Bromley:

2406

Q. In this Exhibit No. 44, for identification, by Bonwit Teller, is this a typical underwear advertisement for the year 1920 in the woman's field? A. Yes, it is typical.

Mr. Bromley: I offer Respondent's Exhibit No. 44, for identification, and call particular attention to pages 4 and 5.

Chairman Myers: It may be received.

(The magazine previously marked Respondent's Exhibit No. 44, for identification, was received in evidence.)

Robert W. Orr—for Respondent—Direct.

By Mr. Bromley:

2407

Q. Will you tell us what, in your view, is the outstanding change which has developed in advertising standards over the last twenty years, Mr. Orr? A. I think the change is fairly apparent from the comparison of the two issues, 1915 and the current issue.

There has been a gradual trend toward more attractiveness in advertising, better illustrations, better copy, better layouts, more modern approach to the problem. In other words, the trend of advertising has been pretty much in key with the trend in everything else.

Q. Have you in your own business ever employed the Varga girl drawings or illustrations in current day advertising? A. Yes, we have been using Varga illustrations now for three years to illustrate our Jergen's Face Powder series.

2408

Chairman Myers: Just what is a Varga girl? I am not clear on that. Is Varga the name of the artist or the name of the type?

The Witness: Varga is the name of the artist, Alfredo Varga, a Peruvian, born in Peru.

Chairman Myers: Where does he live?

The Witness: In Chicago now. Just like the Petty girl is the name of the artist—George Petty.

2409

By Mr. Bromley:

Q. This man Varga makes drawings not only for Esquire but for anybody who cares to hire him or buy his product. Is that right? A. Yes, sir.

Q. And in your advertising campaigns you buy drawings

Robert W. Orr—for Respondent—Direct.

2410

from him? A. Yes. Every year or so we try to think up new ideas for campaigns and we felt that Varga had a tremendous appeal to young girls and our powder appeals particularly to young girls because of the powder being sold in ten and twenty-five cent sizes, and he had popular appeal and we felt Varga would be a good man.

Q. Have you ever made use of the exact same drawing that has appeared in any issue of Esquire? A. Not exactly the same. But we have noticed in some of the drawings he had done for us, his drawings had been almost duplicates of things that have appeared in Esquire.

2411

Mr. Bromley: I ask that the magazine Woman's Home Companion for November, 1943, be marked for identification.

(The magazine referred to was marked Respondent's Exhibit No. 45, for identification.)

By Mr. Bromley:

2412

Q. This magazine marked Respondent's Exhibit 45, for identification,—does there appear one of the Jergen's ads designed and created by you, at page 54, making use of a Varga girl drawing? A. Yes.

Q. Will you turn to the January issue, 1943, the January girl, the Varga girl drawings particularly for the month of January in that book? Are you able to state whether those two drawings are the same, or at least substantially identical? A. It is the same pose and it is very similar. The face is a little different but other than that —

Mr. Hassell: I submit, Mr. Chairman, that the Board, I believe, has enough intelligence to make the comparison of the two drawings.

Robert W. Orr—for Respondent—Direct.

Mr. Bromley: I agree. I offer Exhibit 45 in evidence.

2413

Chairman Myers: Received.

(The magazine heretofore marked Respondent's Exhibit No. 45, for identification, was received in evidence.)

Mr. Bromley: This is in the January issue of Esquire, 1943, the first of the 12 Varga drawings.

By Mr. Bromley:

2414

Q. Can you tell me this, Mr. Orr: Could you go over a list of concerns advertising in Esquire in 1943 and tell me whether, based upon your knowledge and experience, the advertisers listed are or are not a type who would exhibit their products in class magazines generally and would be careful in their selection of media for their advertisements?

Mr. Hassell: I object. I don't think this is proper testimony, Mr. Chairman. I don't think it has any relevancy to this issue here.

Chairman Myers: Will you read that question, please?

2415

(Question read.)

Mr. Bromley: I would like to get somebody to express an opinion as to who our advertisers are, whether they are decent people, or whether they are not.

Mr. Hassell: I don't recall that there is any issue as to the advertisers here, except that one advertisement has been called attention to.

Robert W. Orr—for Respondent—Direct.

2416

Mr. Bromley: I offer it only as a means of testing the respectability and decency of the magazine. If respectable people advertise in the magazine it is inconceivable to me that that doesn't tend to prove it is decent. If it is pornographic I don't believe the United States Steel Company would advertise in it.

Mr. Cargill: Do I understand you to say that on these exhibits you are putting into the record now, you intend to confine the use to the advertisements only?

Mr. Bromley: Yes.

2417

Mr. Cargill: All right.

Chairman Myers: The objection is overruled. You may answer.

The Witness: Yes, the list of advertisers I have looked over are all representative advertisers that do use the leading magazines and newspapers throughout the country, and are not confined just to Esquire.

By Mr. Bromley:

Q: Take this list. Is that true of American Airlines, Inc.?

A. Definitely American Airlines use the leading newspapers and magazines.

2418

Q: And what do you know about the Alligator Company?

A. The Alligator Company make raincoats. They advertise in quite a few of the magazines.

Mr. Bromley: You understand, if the Board pleases, that I am now referring to advertisers in these eleven issues of Esquire, not to these magazines that I have put in evidence. Have I made that plain?

Chairman Myers: It is to me.

Robert W. Orr—for Respondent—Direct.

By Mr. Bromley:

2419

Q. What about Arlington Mills? A. What do they make?

Q. I don't know. That's what I'm asking you. A. Well, that is one I am not familiar with.

Q. Arlington Mills is a division of the William Whitney Company, Incorporated. A. That doesn't mean anything to me.

Q. What about Arrid, A-r-i-d? A. Arrid is a depilatory. They are national advertisers.

Q. What about Arrow Ties? A. They are Clinett-Peabody, also national advertisers.

Q. What about Arch Preserver Shoes? A. They also advertise in a big list of magazines.

Q. What about Bostonians, makers of Footsaver Shoes? A. They are also large advertisers.

Q. Botany Worsted Mills? A. The same thing is true.

Q. Beech-Nut Gum? A. Beech-Nut Gum is a big advertiser.

Q. Book-of-the-Month Club? A. They are big advertisers in first-class magazines like Time and Esquire.

Q. Bristol-Myers Company? A. Bristol-Myers is one of the country's biggest proprietary advertisers.

Q. In the pharmaceutical field? A. And cosmetics.

Q. What about Bank of America Traveler's Cheques? A. It is a limited advertiser, but one of the best institutions of its type in the country.

Q. What about the Boston Herald-Traveler? A. The Boston Herald-Traveler is one of our oldest newspapers and uses a limited list of high-class publications.

Q. What about Burberrys, Limited? A. They are not large advertisers, but a high-class company.

Q. What about Chris-Craft Corporation? A. They use all

2420

2421

Robert W. Orr—for Respondent—Direct.

2422

the class magazines like Time and Esquire, magazines appealing to people with money who can afford to buy motor boats.

Q. What about Cheney Brothers? A. Cheney Brothers, cravats, they are big advertisers in men's magazines.

Q. What about Edwin Clapp & Son, Inc.? A. They are also big advertisers.

Q. Do you know what they make? A. Shoes, I believe.

Q. And the Chicago Daily News? A. The Chicago Daily News is the same class as the Boston Herald-Traveler, high class newspaper, use a very limited list of newspapers and magazines.

2423

Q. What about Chantilly (Houbigant). A. Chantilly perfumes. They use a fairly limited list of high class magazines.

Q. What about Ciro? A. The same thing would be true of Ciro perfumes.

Q. What about the Chrysler Corporation? A. The Chrysler Corporation is one of our biggest advertisers, of course tremendous, radio, newspapers and magazines.

Q. What about R. J. Reynolds Tobacco Company? A. The same thing is true of R. J. Reynolds Tobacco Company. They have a fifteen million dollar account.

2424

Q. Cohama Tie Fabrics? A. Not so well known. It is a small manufacturer, I believe, which has a limited list of publications.

Q. Do you know the Conklin Pen Company? A. The Conklin Pen Company is one of the largest pen manufacturers.

Q. William Demuth & Company? A. William Demuth & Company use small space in a limited list of high class magazines appealing to men like Time, Fortune, Esquire.

Q. What do they make? A. Pipes.

Robert W. Orr—for Respondent—Direct.

Q. What about Dobbs Hats? A. Dobbs Hats are fairly high class hats in a limited list of newspapers.

2425

Q. What about Mary Dunhill, Inc.? A. Mary Dunhill, Inc., they make a fairly high price line of cosmetics that run in Vogue, Harper's, Esquire, and the like.

Q. What do you know about the Electric Auto-Lite Company? A. I don't know much about their advertising. They run in high class magazines, that is all I know about them.

Q. They make storage batteries? A. Yes.

Q. What about the Eterna Watch Company of America, Inc.? A. The Eterna Watch Company, I understand, is a very high priced watch that runs in a limited list of magazines.

2426*

Q. That is the well-known self-winding watch, is it not? A. That is true.

Q. What about The Florsheim Shoe Company? A. The Florsheim Shoe Company is a large shoe concern—large advertisers.

Q. And the Ford Motor Company? A. The Ford Motor Company is one of our big advertisers.

Q. What about Paul Flato? A. Paul Flato is a very small advertiser appealing to a very limited number of people, to those people who can pay the price of the jewelry.

Q. What about Germaine Monteil? A. Germaine Monteil is one of our high class costumers running in a limited list of magazines.

2427

Q. The Gruen Watch Company. A. The Gruen Watch Company is one of the high-class watches. They use a selected list of publications.

Q. Girard-Perregaux. Do you know anything about them? A. I am not familiar with them.

Q. General Motors Corporation? A. General Motors Corporation, of course, is one of our largest advertisers.

Robert W. Orr—for Respondent—Direct.

2428

Q. The Hamilton Watch Company? A. The Hamilton Watch Company probably make one of the finest American watches and use a select list of magazines.

Q. G. F. Heublein & Bro.? That is the brewery in Hartford. A. They make cordials, I believe.

Mr. Hassell: Cocktails.

Mr. Bromley: The advertising they place with us happens to be for A-1 Sauce.

By Mr. Bromley:

2429

Q. What about Harris Tweed Association, Limited? A. They use a select list of magazines.

Q. Is that a clothing fabric house? A. Yes.

Q. What about Hanan & Son, Inc.? A. Hanan & Son is one of the oldest shoe manufacturers.

Q. The Hat Corporation of America, making Dobbs and Knox hats? A. The Hat Corporation of America use a select list of magazines.

Q. Holeproof Hosiery Company? A. Holeproof Hosiery is one of our largest advertisers.

Q. Hartmann Trunk Company? A. Hartmann Trunk Company is one of the few trunks that are nationally advertised.

2430

Q. Hart Schaffner & Marx? A. One of our largest and really old clothing companies.

Q. Hickok? A. Hickok belts are nationally known and advertised.

Q. Interwoven Stocking Company? A. One of the biggest stocking advertisers.

Q. International Shoe Company? A. What is their trade name?

Robert W. Orr—for Respondent—Direct.

Q. Roberts, Johnson & Rand? A. Oh, yes. Well-known
advertisers.

2431

Q. George Jensen, Inc.? A. George Jensen makes a very
fine line of silverware and appeals only to the people who
have the money that can afford that merchandise.

Q. Johnston & Murphy? A. Johnston & Murphy shoes is
a well advertised shoe.

Q. Je Reviens (Worth). Do you know what that is? A.
No, I don't.

Q. Jantzen Knitting Mills? A. What does Jantzen make?

Q. Bathing suits. A. Oh, yes; probably the biggest ad-
vertiser in bathing suits.

2432

Q. A. H. Pond, Inc., Keepsake Diamonds. A. A very
small advertiser for a limited list of magazines.

Q. Longine-Wittnauer Watch Company, Inc.? A. One of
the biggest watch advertisers.

Q. The Literary Guild of America? A. The Literary
Guild of America, mail order books, I believe they run a
limited list of publications with large circulation.

Q. P. Lorillard Company? A. P. Lorillard Company is
one of our own accounts and advertise in magazines, news-
papers and the radio.

Q. Mothersills? A. A very old remedy that has been ad-
vertised for years in newspapers and magazines.

2433

Q. Marlboro Cigarettes. Philip Morris & Company? A.
Marlboro Cigarettes appeal to women. They use high class
publications and magazines exclusively.

Q. Mallory Hat Company? A. A big hat advertiser.

Q. Manhattan Shirts? A. Manhattan Shirts, the same
thing is true of them, a big shirt advertiser.

Q. Mido Watch Company of America, Inc.? A. A small
watch advertised in a limited list of magazines.

Q. North American Aviation, Inc.? A. One of our big

Robert W. Orr—for Respondent—Direct.

2434 aviation companies, using big space, institutional space in newspapers and magazines.

Q. The New York Sun? A. The New York Sun, one of our leading newspapers using limited schedules.

Q. Northern Furniture Company? A. I am not familiar with what they make.

Q. Nunn-Bush Shoe Company? A. Nunn-Bush Shoe Company, a consistent advertiser over a period of years in high class magazines.

Q. Maker of shoes? A. Yes.

Q. A. E. Nettleton Company? A. A. E. Nettleton Company, a big shoe advertiser.

Q. The Owens Yacht Company? A. I am not very familiar with their advertising. I know they use a few high class magazines.

Q. Palm Beach Suits (Goodall)? A. They are large advertisers of Palm Beach suits in Esquire, Time and the similar men's magazines.

Q. Parfum L'Orle? A. A medium-sized advertiser of perfumes using the high class magazines.

Q. Phoenix Socks? A. Phoenix Socks is a big hosiery advertiser.

Q. Pacific Mills? A. Also a big advertiser.

Q. A. Stein & Company—Paris? A. Paris garters, use small spaced advertisements, very old advertisers.

Q. A. Stein & Company is the maker of Paris men's garters? A. Men's garters, yes.

Q. The Parker Pen Company? A. A big national advertiser in selected magazines.

Q. Pepsodent? A. Pepsodent is probably the biggest advertiser of tooth paste.

Q. Phillips-Jones Corporation (Van Heusen)? A. Van Heusen is second only to Arrow in volume of space used.

Q. For shirts and collars? A. Shirts and collars.

Robert W. Orr—for Respondent—Direct.

Q. The Plaza Hotel? A. The Plaza Hotel in New York, New York's foremost hotel, I would say; a limited list of publications.

2437

Q. Phillippe Patek & Company? A. That is considered one of the finest Swiss watches and uses a limited list of magazines.

Q. Prince Matchabelli? A. Matchabelli perfumes is confined largely to the better class magazines.

Q. Rolex Watch Company, Inc.? A. A very high class watch and they use a limited list of publications.

Q. Renoir Parfums, Ltd.? A. A small perfume advertiser using a limited list of magazines.

2438

Q. Sir Walter Raleigh pipe tobacco? A. Sir Walter Raleigh is an R. J. Reynolds brand, large advertisers.

Q. The Rolls Razor, Inc.? A. The Rolls Razor is an English razor which advertises in a limited list of high class magazines.

Q. Regal Shoes? A. A big advertiser.

Q. Republic Aviation Corporation? A. A big advertiser at the present time, doing an institutional job.

Q. Schiaparelli Perfumes? A. One of the bigger perfume advertisers, using a very select list of magazines.

Q. A client of yours? A. Yes.

Q. Skinner & Sons? A. Skinner satin, a real old company, and consistent advertisers for 30 years or more.

2439

Q. What do they make? A. Satin linings.

Q. J. P. Smith Shoe Company? A. I am not familiar with that name.

Q. Sonora Radio & Television Corporation? A. Sonora Radio, one of the better radio sets and consistent advertisers.

Q. The Sugar Manufacturers' Association of Jamaica, Ltd.? A. Fairly limited advertiser in a few mediums.

Q. Savoy-Plaza Hotel? A. One of the better hotels in New York City, a limited advertiser.

Robert W. Orr—for Respondent—Direct.

2440 Q. The W. A. Sheaffer Pen Company? A. Sheaffer is probably the biggest fountain pen advertiser, consistent schedules in exclusive magazines.

Q. Stetson Hat Company? A. Stetson Hat Company, one of the real old advertisers, using most of the men's magazines.

Q. Trabert & Hoeffer-Maubossin? A. I am not familiar with what they make.

Q. F. R. Tripler & Company? A. F. R. Tripler is one of New York City's leading haberdashers, using leading men's magazines.

2441 Q. T. W. A.? A. One of many airlines now doing quite an institutional advertising job.

Q. U. S. Rubber Company? A. One of the big rubber advertisers, using quite a list of magazines.

Q. Union Pacific Railroad? A. Union Pacific Railroad is one of the big railroad lines that is doing a consistent advertising job.

Q. Vultee Aircraft, Inc.? A. Quite a large advertiser in class magazines.

Q. George E. Keith Company? A. I am not familiar with them.

2442 Q. Don't they make Walk-Over shoes? A. Walk-Over shoes is one of the big shoe advertisers. I am not familiar with the name of the company.

Q. Willys-Overland Automobile Company? A. Willys-Overland, a big automobile advertiser.

Q. At the present time would you call that an institutional advertising campaign? A. Institutional advertisers, yes.

Q. Wilson Athletic Goods Manufacturing Company? A. One of the big sporting houses and consistent advertisers for many years.

Q. Is that comparable with A. G. Spaulding & Company? A. Yes, very definitely.

Robert W. Orr—for Respondent—Direct.

Q. Waltham Watch Company? A. Waltham Watch Company, and has been consistently advertising for years—one of our better watch companies.

2443

Q. Wrigley's Soap? A. Wrigley's Soap, rather limited advertiser, but a fairly new advertiser in quite a few magazines.

Q. Zenith Radio Corporation? A. Zenith Radio is one of the very best radio sets, consistent advertisers.

Q. What magazines did you include in the category of class magazines to which you have referred? A. I always consider magazines such as Time, Fortune, Esquire, Vogue, Harper's Bazaar, Cosmopolitan, Red Book as class magazines. In other words, magazines reaching people—we always consider class magazines as magazines reaching people having better than the average income.

2444

Q. What about Life and the New Yorker? A. Life and the New Yorker definitely. I overlooked those. Life and the New Yorker, Time and Fortune.

Q. What about the Saturday Evening Post? A. Well, that I always considered a mass magazine because of its tremendous circulation. We think in terms of class having the high price control circulation, and mass having an unlimited circulation.

2445

Q. And you place Esquire in that class you mentioned? A. I place Esquire in the class of high price control circulation.

Q. Do your company and you personally recommend Esquire as a sound advertising medium to your clients?

A. We use Esquire for several of our advertisers, yes.

Q. Is the character of the magazine and its reading audience one that has an appeal of importance to advertisers?

Robert W. Orr—for Respondent—Direct.

2446

Mr. Hassell: I object to that. We are coming to the question I think the court ruled out a while ago.

Chairman Myers: The objection will be sustained.

By Mr. Bromley:

2447

Q. Have you considered Esquire's character as beyond reproach in placing advertising in this magazine for your clients? **A.** Well, frankly, I have never considered very much the character of Esquire as being any different from any other reputable magazine we have used. I look upon Esquire just as upon Harper's or upon any other magazine in that group. I haven't made any distinction one way or the other.

Q. Are large national advertisers pretty careful in selecting the kind of magazine which they use to reach their audiences? **A.** Definitely, yes. I know of a lot of advertisers who have kept out of quite a few magazines for years when they were not quite sure of their editorial appeal.

Q. Based upon your experience in the advertising field, would you say that any of the advertisers in the list which you and I have just gone over would place any advertising in any publication of a questionable moral character? **A.** I doubt it very much. I know that our clients would not, because they consider it a reflection if they put them in a magazine that had any questionable standing.

2448

Mr. Hassell: I submit, if the Court please, these questions are along the same line.

Mr. Bromley: I have only one more question and then you can have him.

Robert W. Orr—for Respondent—Cross.

By Mr. Bromley:

2449

Q. You don't believe, Mr. Orr, do you, that there is anything about Esquire that would reflect upon your client's advertisements or their products? A. No, I do not.

Mr. Hassell: I object to all these questions.

The Witness: We have advertisers in Esquire who have advertised in Esquire for years and we have never had any complaints.

Mr. Bromley: That is all.

Cross Examination by Mr. Hassell:

2450

Q. What connection, if any, do you have with Esquire magazine, sir? A. No connection other than that of an advertising agency placing space in all media. I mean, Esquire is just one of hundreds of publications that we use.

Q. How old are you, sir? A. I am 46.

Q. How long have you been in the advertising business? A. Oh, at least 28 years. I started when I was about 18.

Q. What year would that take us back to? A. Well, it takes us back 28 years. I haven't figured it out. This is 1943, it would take us back to about '18, doesn't it—1915.

Q. You say you started in as an office boy? A. Yes, sir.

Q. How long did you work at that before you became an official of your company? A. Oh, a good many years.

Q. How many years? A. Well, it was about 10 years. It was more than 10 years. I have only been with them as an official for 12 years, but I was 10 years more or less doing a lot of detail work in an advertising agency before I held any job of any great consequence.

Q. You made this list up about which counsel questioned you, did you not? A. Sir?

451

Robert W. Orr—for Respondent—Redirect.

2452

Q. You made this list from which counsel questioned you?
 A. No, I didn't make it up.

Q. You didn't make it up? A. No, I didn't.

Q. I thought you said you went through these issues of Esquire to determine what advertisers were in them.

Mr. Bromley: He didn't say that.

The Witness: I didn't make up the list. I saw the list. It was shown to me and I recognized the advertisers as important national advertisers.

By Mr. Hassell:

2453

Q. You don't know whether they advertise in Esquire, do you, all of them? A. No, I don't know that.

Mr. Bromley: You can have the list and check it against the list if you want it.

Mr. Hassell: I was wondering what selection he made, whether he left any out.

Mr. Bromley: If we left out any loaded nice we couldn't have done that.

Mr. Harding: They are indexed right in the back of each issue.

Mr. Hassell: That is all.

2454

Redirect Examination by Mr. Bromley:

Q. You don't receive, you or your company, don't receive any of your commissions or any payment from Esquire magazine, do you? A. Positively not. We operate on the same basis as every other agency operates, on a 15 per cent commission. You might say it is paid by Esquire. All the publications pay the advertising agencies 15 per cent on the

Robert W. Orr—for Respondent—Recross.

billing, so that is the policy that has been in effect for many years, so indirectly, really, the publication does pay the agency, but that is a policy that has been established for many years. We don't consider that we are paid by the publication. We consider we are paid by the clients, but we deduct 15 per cent from the bill.

2455

Q. Who are your clients, the magazines or the advertisers? A. The clients are the advertisers. The advertiser pays the bill, and it costs the same amount to advertise direct as it would to advertise through an agency, so it depends upon how you want to be technical about it. We deduct the 15 per cent commission from the publisher's bill, but that is the customary practice in the advertising business.

2456

Q. Now, suppose the advertiser went direct to the magazine, what would happen to the 15 per cent? A. Well, the publication would retain the 15 per cent. They are not supposed to give the commission to any other than recognized advertising agencies.

Mr. Bromley: That is all.

Recross Examination by Mr. Hassell:

Q. You collect a fee from your clients plus this commission from the magazine? A. No, sir; we only collect one fee, and that is the 15 per cent of the billing. We collect that from any medium we do business with. If we advertise with Esquire magazine we deduct 15 per cent from the bill and if we advertise with any other magazine we deduct 15 per cent from the bill.

2457

Q. You refer to your clients. You mean you don't get any compensation at all directly from your clients? A. No compensation directly from clients. That is the policy that has been in effect and that is true of any advertiser.

Aaron Eiseman—for Respondent—Direct.

2458

Mr. Hassell: All right.

Mr. Bromley: That is all.

(Witness excused.)

Mr. Bromley: Dr. Aaron Eiseman.

DR. AARON EISEMAN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

2459

Q. What is your name, sir? **A.** Aaron Eiseman.

Q. And you live where, Doctor? **A.** New York City.

Q. You are a Rabbi, are you? **A.** Yes, sir.

Q. And what education have you received? **A.** You mean secular or theological?

Q. Both. **A.** I have attended the Jewish Theological Seminary of America. I attended, of course, public schools, and am a graduate of New York University with a Bachelor's degree, Columbia University post-graduate course, Master of Arts.

I guess that's about all.

2460

Q. How long have you officiated as a Rabbi? **A.** Forty years.

Q. And with what churches have you been associated?

A. My first congregation is not in existence any more. It is combined with another. It was called the Beth-Israel Temple, 72nd and Lexington Avenue, New York. I stayed there 14 years.

Then I went to Mt. Nebo Temple, situated at 79th between Columbus and Amsterdam Avenues. I was at Mt. Nebo

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14 or 15 years and then to the Hebrew Tabernacle at 164th near Broadway. I stayed there about four years and now I am beginning to take life a little easy. But, I have officiated in the congregations, I guess, actively preaching, and associated with the synagogues about 37 years, although I still continue to function as a minister. I still marry and bury people and go around lecturing and am active in congregational and community life.

2461

Q. Now, in your rabbinical work what association, if any, have you had with young people's organizations? A. Well, nowadays I think we are beginning to realize we have got to get hold of the young. I think every congregation today, not only Jewish but Christian, are beginning to open up young people's organizations.

2462

Ministers are very vitally interested in every phase of young people's lives. We had young people's organizations in my congregations and a union of all the young people's organizations, at conferences where representatives of all young people's organizations could come together once a year and discuss the problems of young people.

Q. Are you also Chaplain at the Florence Crittenton League in New York City at the present time? A. I am.

Q. What is the Florence Crittenton League? A. The Florence Crittenton League is a house situated at 20th Street between 9th and 10th Avenue and it has been there for many, many years. It has been maintained by a number of very fine women.

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Some of the finest prominent women in the city of New York are affiliated with that organization.

It is a house of detention, all girls—no males—delinquent girls, girls who have gone astray, girls that have run away from home and their parents in looking for them have not

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2464

been able to find them and they have gone to court and when they are found this house of detention takes hold of them and they remain there until they are called to the Domestic Relations Court or the Magistrate's Court as a witness, and then the court disposes of their case and they go wherever they are asked to go.

I have been Chaplain of the Florence Crittenton League for 25 or 30 years.

There was also a priest representing the Catholic girls and a minister representing the Protestant girls, and a rabbi representing the Jewish girls. We go there whenever we are called.

2465

I am called perhaps less because there are not so many Jewish girls in proportion. Whenever I am called there, however, we have a service for them, we advise them, and we consult them and try to show what is the right road to get back on.

They are very minor cases sometimes, and some have gone through pretty nearly everything a young girl could go through. It is very sad and tragic in many cases.

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Q. Have you had any work as a teacher, Doctor? A. Oh, yes. Before I became a Rabbi I was a teacher in the evening schools that taught English to foreigners in Brownsville, which is a thickly populated Jewish district, and I have been teaching in my own school. I have always felt that the minister should always be a teacher. In fact, it is traditional among our people that a Rabbi shall be a teacher.

I have taught confirmation classes, I have been a superintendent in our religious school, which every Rabbi is, and I have been very much interested in education in every form.

Q. Have you had any war service as a chaplain? A. During the Mexican mobilization, you know when we had

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that little trouble in Mexico about 1915 or 1916—I don't remember the exact date, but I know it was one of those years—I, together with two other social workers, was asked to go down to the various encampments down South to look over the situation and see what could be done. Of course, we were representing the Jewish community—a lot of our boys had gone from New York, and we were asked to see what could be done to make their life happy and, if possible, establish reception places where they could come and sit around on furlough and even, if possible, to arrange dances and get them to meet some of the nice people of the community.

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I went to San Antonio and El Paso and Douglas, Arizona, and what the U. S. O. is trying to do now we tried to do in 1915 and 1916 when there were no U. S. O.'s.

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That is the type of work we did.

I was not an official chaplain. I just represented a committee of New York Jewry.

In the first war work I was a chaplain.

Q. In the first World War, you mean? A. The first World War I was a chaplain. And I used to go around to camps and do chaplaincy work and then I was placed at Hospital No. 1. That was at the Greenhuts Building on 6th Avenue and 18th Street in New York. That was the hospital that received most of our wounded boys just as they came off the transport. It is estimated that at least 40,000 of our wounded boys came through that hospital. They had to be deloused—I need not tell you gentlemen that the most tragic things any man could ever witness was seen there.

2469

Wonderful work was done there. The women of New York were marvelous, as they always are. When the boys were convalescing we took them to ball games and theaters and

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to see the sights and those that were bed-ridden had flowers on their tables and we gave them all the delicacies, the best food, and, as I say, it was a beautiful piece of work. I stayed there until the hospital closed.

Q. When was that? A. I think that was around 1916 to 1918. I think the hospital was open about two years.

Q. Now, at my request have you examined the material which has been cited and specified here as obscene, lewd, filthy, indecent, and lascivious, in the Esquire magazines for the eleven issues of 1943? A. I have.

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Q. On the basis of your knowledge and your experience and on the basis of your contacts with young men and women, are you able to give us your opinion as to the likely effect of this material on normal average human beings? A. Yes.

Q. Based upon that knowledge and experience, will you state whether in your opinion this material is apt to have a harmful or detrimental effect on average persons in any age group?

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Mr. Hassell: I object to this testimony as opinion testimony. I submit Doctor Eiseman has not shown by his answers thus far that he is qualified to answer this question or to furnish any information which would be of value to this Board.

Chairman Myers: The objection is overruled.

Mr. Bromley: Will you read the last question, please?

(Question read.)

The Witness: I don't think it would have a harmful effect.

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Mr. Hassell: In what age group? 2473

Mr. Bromley: Any.

By Mr. Bromley:

Q. In your opinion, is there anything obscene, lewd, lascivious or filthy in any of the cited material? A. I don't believe so.

Mr. Cargill: What was the Doctor's answer to the previous question?

(The previous question and answer were read.)

By Mr. Bromley:

Q. In your opinion, is there anything in this material, whether textual or pictorial, which would have a tendency to corrupt the standards of what is right and wrong as regards the sexual relation, or to stimulate sexually impure acts and thoughts? A. I don't think so.

Q. And based upon your knowledge and experience, gained in your 40 years as a Rabbi, will you state, in your opinion, whether the complained of material violates in any way the current standards of morals in the community, as you have observed them? A. I don't think they do.

Q. In the course of years of your experience, Doctor, have you observed a constantly changing standard of morals in the community as affects frankness and candor of expression and illustration by the use of the feminine form? A. Definitely so.

Q. Do you recall the poem, "Benedicts awake," in the January, 1943, issue of Esquire? A. Yes.

Q. Referring to that poem specifically, in your opinion,

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2476

is there anything lewd, lascivious, filthy, indecent or obscene in it? A. I don't think so; no, sir.

Q. Will you give us your reasons for that opinion, Doctor? A. The very name "Benedicts", of course, refers to a married man or married men. We usually put people in two classes, benedicts and bachelors.

These are married men. I suppose the story had gone out that they are going to call married men to the front to be soldiers, draft them.

Here is a poem which tells married men that the time is coming when they have to give up the joys of their married life, the pleasures of their married life, that Hitler is coming and Tojo is coming and "You fellows are going to be taken away from these things. Beware, be safeguarded, lose your complacency, wake up."

That is the only thing I can see in the poem. I see nothing that is obscene or in any way immoral in a poem which says to a man who is married, who has a right to indulge in sexual things,—I see nothing wrong in having a poem of that nature.

Q. Have you examined all of the various Varga girl drawings appearing in the eleven issues? A. I have.

Q. In your opinion, is there anything obscene, lewd, lascivious, filthy or indecent about them? A. No, sir.

Q. Will you look specifically, Doctor, at page 107 of the March issue of Esquire, which is the hill-billy cartoon of the women with the two children, in the act of nursing one of them? A. Yes.

Q. Do you find that obscene, filthy, indecent or lewd? A. I certainly don't.

Q. What is the basis of your opinion with respect to that cartoon? A. First of all, it is a cartoon. It is a mother nursing her child and the other child is bawling, probably a little

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jealous of the one that is being nursed, and wants to also be nursed.

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It is a hill-billy way of putting the thing, but I don't see anything obscene in a mother nursing her child. I have seen these things right in the city of New York.

You can go to the slums and see Italian women and Jewish women on a warm night, sitting on the stoop, nursing their children. There is nothing obscene there. It is a perfectly natural, legal, moral thing. It is God's way of arranging things and I would like to see a great many more mothers take their little bundles of flesh to their bosom and nurse them.

2480

I don't see anything here that is in any way impure, immoral, or lascivious in this cartoon.

Q. Now, will you direct your attention to the verse in the April issue of Esquire on page 38 in connection with the Varga girl picture, which picture is entitled: "Peace, it's wonderful", and tell me whether you find in the verse, either with or without the picture, anything that is obscene, indecent or immoral in the picture or in that little piece of poetry. A. I don't see anything obscene, indecent or immoral in that picture or the verse.

Q. Do you think there is anything contained in the verse, taken with or without the picture, which would tend to corrupt morals among any part of the people in your experience, Doctor? A. Definitely not:

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Q. Do you think there is anything in the verse or picture, taken together or singly, which would have a tendency to lower standards of right and wrong so far as sex matters are concerned? A. No, sir.

Q. In your opinion as a clergyman, based upon your experience, would you say there is anything objectionable in a

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moral sense, to reference in a magazine of general circulation to normal sexual relations between husband and wife? A. Certainly not.

Q. Have you read the article entitled "The Court of Lost Ladies" in the April, 1943, issue? A. Yes, sir.

Q. What is your opinion with respect to that article? A. I found that especially interesting from my point of view. It is the writer's account of what he saw at a night court.

I have seen exactly what he has seen in that article. I know exactly what goes on in the night court, but not only that, my brother-in-law was a clerk in the night court for 30 years and he used to tell me what goes on.

2483 Q. Do you think the article is accurate? A. I think the article is very accurate. I think it is an exact reproduction of what goes on in the night courts day after day, and night after night.

Q. Do you think there is anything morally detrimental or harmful to any class of society in a magazine publishing a report such as this is? A. Definitely not, and may I go a little further? I go to the Florence Crittenton League. There are some girls there who have perhaps had their first offense along these matters.

2484 In their blindness and stupidity they may be looking for such a life, an easy life, they think. If I could have that chapter, that part of it, and take that to the Florence Crittenton League and read it to those girls and let them see that this is what they will have to meet some day if they don't look out, these are the humiliations and degradations and the heartaches and tears, that you girls, if you persist in going down the road that you think is going to be glamorous and full of life and ecstasy and pleasure, are going to have.

I would say: "You won't be able to look anybody in the face, your parents or relatives or anyone."

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I think it would have a very beneficial effect on them.

I saw nothing in that article that was in any way immoral. I think it is a fine educational article and that anybody reading a thing like that might be deterred from such a life and those who are in that life would say: "God help me! I don't want to go through a thing like that."

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Q. Turning to the June issue, page 134, do you remember the article on libels which the rough Western editor published in his newspaper? A. I would like to refer to that.

Q. June, page 134, entitled "Libel suits were as wine to that hell firin' editor of the old West, Dave Day." A. Yes, I read that.

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Q. Do you notice that there is a reference to a paragraph or two which that editor printed in his paper about two weddings being on schedule for that week and that that kind of weather made people think of two in a bed, spoon fashion?

A. Yes.

Q. What kind of reference is that, Doctor, or would it be read by people who look at it? Is it a reference to marital relations or otherwise? A. It is announcing a social item in the paper about two weddings going to be on the calendar.

Q. It is a pretty rough reference, isn't it? A. It would not be the right thing to do. It is rough.

Q. Do you think it is obscene or indecent? A. It is certainly not obscene to refer to the announcement of two weddings.

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Q. What is your view of the publication of that four line epitaph that follows the wedding reference? Do you consider that to be obscene or indecent when printed in a magazine of general circulation? A. I wouldn't call it obscene. I would say it is inelegant language, but I don't see how anybody's morals could be affected by a thing like that. I have

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heard it many times. It is an old epitaph that goes back many, many years, and people are not affected by it.

Q. And, further, have you read the paragraph about each correspondent of the paper being assigned his own asterisk? Do you remember that? A. Well, we know what an asterisk is. It is a punctuation mark, isn't it?

Q. Do you get any dirty connotation from that, Doctor? A. No, sir; I can't get anything dirty about it.

Q. Now, suppose you separated the last word so that the last sentence read: "Each correspondent will have his own ass to risk". Would that change your opinion of it? Do you consider that the word "ass" is an indecent or obscene word?

2489 A. Not according to our modern standards of talking and, reference to the word "ass" is peculiar. It just comes to me now.

I used to teach the girls in the Sunday School classes, and, of course, the Tenth Commandment: "Thou shalt not covet thy neighbor's wife, nor his house, nor his maid-servant, nor his ass, nor anything of thy neighbor."

Years ago there used to be a little titter, a little laughter amongst the kids, misinterpreting, but later on when they probably understood and really heard the expression, it was not the same.

2490 Q. Now, will you look, Doctor, at the July issue, page 76, the picture of a scene from a show called "By Jupiter". Look particularly at the degree of exposure exhibited by the show girl in white in the center of the picture. Do you find anything indecent, obscene, lewd, or lascivious in that picture?

A. I do not.

Q. Would you think that the publication of a picture such as that in a magazine of general circulation would have any adverse effect morally upon any class of society that you know? A. I do not.

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Q. Is that a commonplace thing on the New York stage and other stages, as you know them? A. Yes.

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Q. And is it commonplace now to publish such pictures as that in magazines of general circulation? A. Decidedly so.

Q. Would you think that public reaction to this picture would have been different 20 or 40 years ago? A. I think it would.

Q. Would the publication of such a picture as that be condemned 40 years ago, do you think? A. There is a possibility, considering the conservativeness with which we looked upon these things. I don't know whether it would be eliminated, but I think a lot of people would have felt it was not the right thing to do.

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Q. As of that time? A. Of course, at that time.

Q. Have you observed, Doctor, a change in the times in the last forty years as to the propriety of revealing the feminine form both in our life and in picture magazines and in advertising? A. Decidedly.

Q. And has the tendency been towards greater frankness and forthrightness in that respect? A. Decidedly.

Q. Did you read the story "The Portrait Above the Fireplace" in the October, 1943, issue of Esquire? A. Yes, sir.

Q. What is your opinion with respect to that story? A. There is one story that appealed to me very much. I think it is a beautiful thing.

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Here the boy is left an orphan, according to the story, with a great yearning for companionship and love and he gets this picture and puts it over his fireplace and thinks of it. It is probably a very beautiful girl or woman. And he goes to bed and dreams of her.

This picture is an inspiration to him and it inspires him to such an extent that he rises on the rungs of the ladder

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2494

and studies hard and becomes a lawyer and gets a great deal of good, healthy thought and happiness out of this picture.

A foolish drunken friend tells him that that picture he has had on his mantel is a mistress, a fallen woman. It was a very unfortunate thing that a fool like that should have ever tried to shatter the ideals and dreams of this fine boy.

I don't see that in any way, not even by the greatest stretch of the imagination, that there can be anything obscene or lewd or impure or immoral in the entire article.

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I am glad that the boy didn't take the advice of his drunken friend. Maybe that boy had gone to a church and had heard a sermon that is preached very, very frequently in the Christian church, the fallen woman who was met by Christ on the road and the populace were about to stone that woman because of her sinfulness. Christ turned to the crowd: "He who is without sin, let him cast the first stone. Go, and sin no more."

If you want to put things in a picture, perhaps the boy may have had the picture and thereafter he said: "This is still my mother, no matter what my drunken friend has said about her."

That would be my interpretation as a minister.

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Q. Now, Doctor, having examined all of the complained of material, will you please state whether, in your opinion, taken collectively in any one issue, or singly, it is obscene, indecent, filthy, lascivious or lewd? A. I don't think collectively or singly that there is anything obscene or lewd in those pictures.

Q. Taking all of the material collectively in any one issue or singly, do you think it would have the tendency to corrupt the morals or lower standards of right or wrong with respect to sexual relations or to stimulate sexually impure thoughts in the normal average human being? A. I don't think so.

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Q. Is that your opinion, Doctor, even though you consider the material collectively in all of the eleven issues? A. That is my opinion.

2497

Q. Have you ever been a subscriber to Esquire? A. Yes, sir.

Q. For how long? A. The last three years.

Q. Are you a regular reader of the magazine? A. Yes, sir.

Q. Do you have it in your house? A. Yes, sir.

Q. Do you have any children? A. I have two sons.

Q. Do you know whether or not they have read it during their adolescence? A. They have.

Q. Do you know what their reaction to the publication has been? A. They like it very much. In fact, both of them have told me that.

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Q. Have you ever had any objection to its being around the house and their reading it or looking at it? A. No, sir.

Q. And have you recently donated your collection of Esquire copies to any organization? A. Yes, sir.

Q. What one? A. I sent it to the U. S. O. branch at the most fashionable Temple in New York, Temple Emanuel, 65 Street and 5th Avenue, where they have given over the entire vestry room, the Louis Marshall room, to the U. S. O.

When I moved from one apartment to another I had about 50 copies, and I decided to send them over to them and I got a letter of thanks from the authorities there telling us that the boys were very, very fond of Esquire and making good use of them.

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Q. Have you made an examination of these eleven issues, not only limited to the complained of material, but generally, as to their general contents? A. Yes, sir.

Q. All the issues? A. Yes, sir.

Q. In your opinion, is there any one of the eleven issues which, taken as a whole, panders to the prurient taste or over-expresses the sex side of life? A. No, sir.

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2500

Q. Now, has your experience been with the so-called privileged class of our society or with the middle or even less privileged classes? A. I would say the middle-class, also the under-privileged, the poor.

Q. Where were you born and brought up, Doctor? A. New York City. I was born on the east side, in the slums.

Q. Were you brought up there as a youth? A. My earliest days were spent there.

Q. So your experience has been with the poorer people in that metropolis? A. Yes.

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Q. For part of your life, anyway? A. Yes, practically all of my life, because my sisterhood in the congregation had what is known as a milk-fund where poor people could apply for and get free milk, and most of these cases, of course, came from the poor districts, from the Bronx and the east side, and I would go down there and hear reports from the sisterhood in the meeting and come in contact with the poorest of the poor. All of my ministry has been in connection with that.

2502

Q. Would you say that our current day standards are featured by frankness and forthrightness of expression with regard to sexual matters, differing from that which prevailed 40 years ago when you started out as a Rabbi? A. Most decidedly so.

Q. You believe, Doctor, that as a Rabbi, so far as such frankness and forthrightness of expression with regard to sexual matters that the tendency in the majority of cases has been to build up a resistance against lewdness and sexual impurity, rather than to break down our moral standards? A. I am emphatically of that belief.

Q. In your opinion, can you tell us, after your examination of the issues of this magazine as a whole, whether such material complained about furnishes the dominant note on

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the issues taken as a whole, or whether it does not? A. It 2563 does not; certainly not.

Q. Are there among the major parts of these issues many pages which are devoted to worthwhile subjects quite different? A. Yes, sir. Well, the reason, is I looked at the contents and I see so many articles by men that I have known myself, Sholom Asch.

Q. Who is he? A. Sholom Asch is the great Jewish novelist who, by the way, has written two books on the New Testament, on the Nazarene and St. Paul, that are acclaimed to be probably the finest pieces of work on those two characters in existence, and I advise everybody to read those books and get the greatest amount of inspiration, especially "The Nazarene". 2504

On this Mr. Phelps, everybody knows the outstanding type he was and that under no circumstances would he ever contribute to any magazine or any article that would in the least be obscene or lascivious or immoral.

Q. You refer to William Lyons Phelps? A. William Lyons Phelps who just died about three months ago.

Q. Do you notice that each issue of the magazine features many articles about sports? A. Yes, sir, very popular part of the magazine, sports.

Mr. Bromley: That is all. 2505

Cross-Examining by Mr. Hassell:

Q. Doctor, what shade of Jewish life— A. What is that? Q. What shade of Jewish life is your congregation represented by? A. My first congregation was conservative, the rest reformed.

Q. The more recent, reformed? A. Yes.

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2506 Q. You have never been connected with an orthodox congregation? A. Not a strictly orthodox one. We have three kinds of congregations, orthodox, conservative, and the reformed.

Q. Of these the reformed are the more liberal, Doctor? A. Yes, sir.

Q. In thought, than the others? A. Yes, sir.

Q. Now how much contact have you had with teen-age boys and girls, adolescent, and immediate post-adolescent?

2507 A. Well, a junior organization of adolescent boys and girls, post-graduate girls and boys. We have the Young Folks League and Junior Organization, we all come in contact with them.

Q. How close are young Jewish people to the Rabbi of a congregation? A. The same, I suppose, as in every other congregation, Christian or any other form. I wouldn't say they are intimate, yet in many cases we find certain classes of boys that come closer to the Rabbi than others, not that the Rabbi in any way tries to shun that intimacy. In fact, we try to develop it as much as possible. I can say that in all my ministry I have been very close to my boys and girls, so much so that there is hardly a week passes now that these boys and girls, grown to manhood and womanhood, do not come to me and ask me to marry them when the time comes, in spite of the fact that all these years have intervened and I may not have seen them or heard from them, yet they remember me because of the years they spent with me in my religious school or in the Young Folks League.

Q. Do these young people in the Jewish congregation, as a general rule, come and confess their sexual derelictions and so forth to the Rabbi? A. No, we have no confession.

Q. In how many instances during your 40 years as a Rabbi has any member of your congregation, adolescent or young

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man, come to you and confessed as to what might have caused him to have sexually impure thoughts and to practice so-called self-abuse for instance? A. How many cases?

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Q. Yes. A. I wouldn't say there were many. There were individual cases of boys that I am intimate with, but those have come into my study and told me about these intimate relationships.

Q. Those were the rare cases, though, weren't they, Doctor? A. Well, they are not so rare now as they were years ago.

Q. I understood you to say that now, though, for the last four years you have not been officiating as a Rabbi? A. Not connected with any congregation.

2510

Q. Since 1936? A. Since 1936, yes, but still active in the community and still a chaplain of the Florence Crittenton League where I have interviews continually with those people.

Q. You want this Board to understand that, as a general rule, the young people in your various congregations would come and tell you or volunteer to you just what things, publications and other things, caused them to have sexual desires and made them especially or unduly sexually stimulated? A. I don't get the first part of your question.

Q. Do you want this Board to understand that as a general and usual thing the young people in your congregation have come to you and confessed voluntarily what caused them to become sexually stimulated? For instance, a magazine of this sort. Do you want the Board to understand that the youths of your congregation usually did that? A. No.

2511

Q. Do you consider the girls in the Florence Crittenton Home immoral? A. Not all of them.

Q. Not all of them? A. Oh, no, not all of them.

Q. As to those that you contacted, did you ever run across

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2512 cases where they confessed to you that they were brought to that condition by obscene matter in print or pictures? A. No, sir, never have.

Q. No obscene matter in print or pictures whatsoever? A. No, sir.

Q. In the Hebrew Schools, in the congregation schools, children are usually under 13 years of age, aren't they? A. No, sir.

Q. Would you say the majority of them are under 13? A. No, sir. In some schools we have a very large number who are beyond 13.

2513 Q. You are speaking now of the schools? A. Yes.

Q. Comparable to the Christian Sunday school? A. Sunday school.

Q. You have a large majority above 13? A. Not the large majority. I would say a fair proportion.

Q. In some there is a majority above, but, as a matter of fact, in most of them the majority is 13 and below, isn't it? A. I wouldn't know what proportion, but I know that there is a tendency nowadays to try to get these boys and girls in their adolescent period, whereas in former days, when they graduated from the religious school, many of them would leave. Now the tendency is to keep them. We have post-graduate courses in the religious school and when we get them out of the post-graduate and graduate them we try and keep them and get them into the junior organizations and the Young Folks League where they can have dances and entertainment. The thing is to get them and keep them under the auspices of the church, the wholesome auspices of the church.

I suppose twenty-five, or thirty, or forty years ago if it was suggested that we have dances in the church the Board of Deacons would raise their hands in alarm, but today the

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Board of Trustees in my Temple said, "Let us have all the dances we can; let us have the boys and girls right here instead of running around to Roseland or on the Great White Way. Let us have them here where they can meet other boys and girls," and I think that is a great idea.

Q. Are not other Rabbis different from you as to the indecency of this Esquire magazine? A. Oh, I imagine that they might differ. They are entitled to their opinions.

Q. They are entitled to their own opinions? A. They would be entitled to their own opinions.

Q. Probably other Rabbis who have had just as much experience as you? A. Very possible. They would be entitled to their opinion, but may I say just this one word.

2515

Q. Just a minute, Doctor. A. All right.

Q. Do the majority of the Jews belong to the reform organization or the reform— A. Temple?

Q. —congregations or Temples? A. The largest majority?

Q. Yes. A. It all depends on what city you are in.

Q. Well, for instance, do you know anything outside of New York City? A. I know something about it.

Q. Well, take New York City. Out of the majority of the Jews in New York City how many are members of the reform congregations, and in the conservative, and orthodox congregations? A. In New York City I would say that as to reform and conservative they would have more than orthodox. You see the orthodox members were increased by immigration, people coming from Russia and Poland. They were orthodox and they came here and replenished the orthodox stock. The children of the orthodox did not remain orthodox; they graduated into the reform movement, into the up-to-date movement as they felt. I don't know how many of you gentlemen know what orthodox means, or what an orthodox con-

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2518 gregation is, but an orthodox congregation is one where the sexes are separated, where the men are downstairs and the women are upstairs, and the services are all in Hebrew, no English, unintelligible to an intelligent boy of today; therefore, the reform congregation has received a tremendous number of the orthodox, so I would say that the reform temples are in larger numbers than the orthodox.

Q. The reform has a larger number than the orthodox has in New York City? A. Yes, and in all large cities. The same applies to all large cities.

Q. But how about the conservatives? You have left the conservative out of New York City. A. The conservative are in between. The conservative is not a very large number.

Q. Well, are there more in the conservative than the orthodox combined and in the reform? A. No, I wouldn't say that. There are more orthodox than there are conservatives.

Q. There are more orthodox than conservative? A. Yes.

Q. But there are less of those two combined— A. Than in the reform.

Q. In New York City than there are of the reform that are in the majority? A. Yes.

Q. Do you have any statistics or anything to base that on?

2520 A. There is no way of finding that out. I have never seen any statistics revealing how many orthodox Jews or reform Jews or conservative Jews there are. We have never tabulated them that way. The only way would be to get it from the different congregations.

Q. Can you state how many congregations there are in each one of these three groups in New York City? A. You mean Temples?

Q. Yes. How many does the reform have as compared with the total number of conservative and orthodox? A. You see we are different from any other denomination. In New York

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you may have dozens and dozens of very little, what they call Chévres, that is an association of orthodox Jews; they call themselves a congregation. They may have a little-loft or a room in a building and they call themselves a congregation; or you may have a regular orthodox congregation of which I don't think there are more than 15 or 20 in the congregation. Those are the predominant ones.

2521

On the other hand, the largest congregations, the most influential congregations in New York are the reform congregations. Like from 79th Street to 96th Street you will find a dozen of the largest reform congregations probably in America, and you will find just two or three orthodox congregations and just about two conservative congregations.

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Q. Would you say that that same proportion will hold throughout the United States? A. I think so.

Q. Are you familiar with the number of reform congregations in the City of Washington? A. No, sir, but I know there is one very large reform congregation.

Q. Would you be surprised if you were told there is only one reform congregation but thirteen conservative and orthodox congregations in this city? A. No, I wouldn't be surprised. That may hold true in some communities but it all depends on what you call an orthodox congregation. As I said, it may be a congregation of 25 members and still call itself a congregation. I know one thing, they are not large congregations with large membership, whereas the reform congregation includes probably the most prominent members right here in Washington.

2523

Chairman Myers: The orthodox have cantors and schoichets, do they not?

The Witness: What is that?

Chairman Myers: Schoichets.

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2524

The Witness: The reform may have them also.

Chairman Myers: The reform have cantors and schoichets?

The Witness: No, no schoichets; they just have cantors. The schoichets are only in the orthodox.

Chairman Myers: We will take a short recess.

(Whereupon a short recess was taken.)

By Mr. Hassell:

2525

Q. Doctor, is it a fact that the wealthier Jews are usually associated with the reform congregations? A. That is the impression that a lot of people have, but there are wealthy people connected with orthodox congregations, too.

Q. But more in the reform congregations, Doctor? A. I would say yes.

Q. Doctor, is it a fact that clergymen generally are strongly in favor of maintaining the sanctity of marriage? A. Yes, sir.

Q. You say yes? A. Yes, sir.

Q. If that is so, do clergymen generally and do you approve of jokes glamorizing the illicit relation, sexual relationship? A. It all depends on the joke. After all, in our day there has been such a liberalization in regard to these things and I think that most clergymen realize the changes that have taken place and they begin to understand that marriage, sexual desires and appetites are normal and legal, physically and spiritually; that unless the joke is really a very licentious one—

Q. If it deals with illicit relationship, Doctor, that is what I have reference to. A. Such as rape, will you say?

Q. Well, cartoons dealing with illicit sexual relationships. A. I don't think there would be any objection to them.

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Q. You would not object to it? A. I would not object to it.

2527

Q. Have you, say, let up a little on the effect of that portion of the Tenth Commandment you cited. "Thou shalt not covet thy neighbor's wife"? A. What do you mean, let up?

Q. Well, do you believe in that? A. Yes.

Q. Do you practice that? A. I certainly do.

Q. You practice it in so far as literature is concerned affecting that relationship? A. Yes, sir.

Q. In the November issue of Esquire, page 52, I call your attention to a cartoon in colors showing a sheik talking to a couple of possibly slave girls, but with hair-dos and facial contours indicating they might be American girls, and another Oriental gentleman going off in the distance has his arm about two girls and underneath the legend, "Such a neighbor, always borrowing." Do you think that that reflects upon the sanctity of the marriage relationship in the United States where this magazine is being circulated? A. Decidedly not.

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Q. You don't? A. No, sir.

Q. You think so far as the Tenth Commandment is concerned it would have no application to this? A. No, sir.

Q. Well, the sheik in the distance not only coveted his neighbor's wife, or his women, but he went and borrowed them actually and he is taking them away, isn't that the fact? A. You must remember you are not in America here. That is an old custom in the East.

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Q. But why publish that in an American magazine circulated throughout the United States? A. Oh, there is nothing obscene about it, unless what you read into it. I don't see any lewdness or any lasciviousness in it. I don't see that that cartoon would in any way arouse any

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2530

sexual desires or lower the moral standards of anyone looking at it. I don't think anybody looking at it would ever even think of the Tenth Commandment.

Q. Probably have never heard of the Tenth Commandment? A. Well, they have heard of it all right, more than we think, but I don't think they would ever, in any way, ever connect the Tenth Commandment "Thou shalt not covet" with this here Oriental custom of borrowing even his wife. In New York City we have a neighbor coming in and says, "I would like to borrow this and borrow that, will you give me some eggs today and some coffee today", an old American custom.

2531

Q. And an old American custom to borrow females? A. No, it is not, thank God, not yet.

Q. We need not go over it further, but you think it is perfectly proper and it bears no reflection to the marital relationship? A. No, sir, I think it is perfectly proper.

Q. It does no injury to your religious views? A. It certainly does not.

Q. Or your views relating to morality? A. No, sir, none whatsoever.

2532

Q. Now, referring to the cartoon on page 65 of the February issue. There we have another cartoon indicating that a young lady with flaxen hair, apparently not Turkish or Egyptian, or near-Eastern, with a very revealing costume, is being sold. Do you think that reflects upon the sanctity of marriage, that cartoon? A. Certainly not. Do you want me to give my opinion on the cartoon?

Q. I think you have done so, Doctor. A. What?

Q. We might save a little time by going ahead. A. All right.

Q. Page 49 of the March issue. Now here we have another cartoon, full page in colors, showing what appears to be a

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slave girl in a very scanty costume and two apparently French soldiers on the desert, and the statement underneath "I wonder how the Sultan knew this was my birthday?" You say this has no improper sexual connotation whatsoever? A. No, sir.

2533

Q. Apparently this slave girl is not the wife or the intended wife of either one of these soldiers; wouldn't you say that is the fact? A. I don't know, she is probably not, but I don't see anything obscene about it and it is an old custom in the Orient there.

2534

Q. An old custom to give women for birthday presents? A. No, I didn't say an old custom to give women for birthday presents, an old custom for Sultans to have a harem, and to show his appreciation he wanted to give this girl, but it doesn't say in the picture that there is any illicit relationship or anything immoral in the picture. It may be in the mind of the soldier but that is putting something in that is not there.

Q. What interest do you think the readers of such a magazine as Esquire would have in a question of that sort? A. What interest?

Q. Yes. A. Well, I certainly don't think that they would get anything obscene or immoral out of it. It is a cartoon. And most of us look upon cartoons as something humorous and that's about all. It is nothing serious at all. I don't think it affects their sexual minds in the least.

2535

Q. No matter what the cartoon is? A. I don't say no matter what it is, but this cartoon we are talking about—

Q. The fact that it is a cartoon lends some decency to it, in your mind, does it? A. Not necessarily, but a cartoon is usually something humorous, a caricature, intended to try to create a laugh.

Q. What is amusing about that cartoon you just looked at?

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2536

Mr. Bromley: Where is it; I have lost it.

The Witness: I said it is intended to create a laugh. I didn't say it was always successful.

By Mr. Hassell:

Q. There is nothing amusing about it? A. There is nothing amusing about it to—

Q. Even though it is obscene? A. The cartoon does not say it is obscene or immoral. These fellows might be thinking something obscene, but that doesn't mean that the reader can read into this cartoon any obscenity.

2537

Q. Would you say there is nothing amusing about it? A. I wouldn't laugh myself sick about it.

Q. Would you laugh at all about it? You say it is not amusing at all. A. I would say it is not amusing.

Q. You think it is just a waste of space to put it in there? A. Not a waste of space. Some people might get a laugh out of it. They may like this type of cartoon.

Q. Why would some people like this type of cartoon? A. Why?

Q. Yes. A. There is nothing obscene about it. It is like any other cartoon. If you look through a book like this, you like cartoons. I don't know why they like them.

2538

Q. Would the reader or the person who buys this Esquire and looks at that cartoon be likely to put himself in the position of the soldier who is receiving the birthday present? A. No, sir; certainly not.

Q. You don't think so? A. Not unless he was a degenerate or a moron. But an ordinary human being with an average mind, clean minded, looking at a picture like that, I don't think he can get anything obscene out of it.

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Q. I see. There is no point to it at all, is there? A. Nothing at all to me and—

2539

Q. You referring to a person being a degenerate who would attempt to put himself in the place of one of those soldiers.

Mr. Bromley: Will you let him answer the question before you rush off into another one?

Mr. Hassell: I thought he had. Did you have anything further to say?

The Witness: That's all right.

By Mr. Hassell:

2540

Q. You spoke of a person being degenerate who would place upon this cartoon any sexual implications. Is that right? A. I didn't understand that.

Q. Any person who would attempt to visualize himself in the place of the soldier receiving this birthday present, is that right? A. If he had an evil mind, he might do that.

Q. So doesn't it naturally follow that this is a picture of a degenerate act here? This soldier is receiving a woman, a personable, well-formed young woman, as a birthday present. Doesn't it follow that he is a degenerate then and it is a picture of a degenerate act? A. I don't get that implication.

2541

Q. I see. Refer to page 43 of the September, 1943, issue of Esquire. Here we have a cartoon in colors, full page size, showing what appears to be a Near Eastern sheik or a man dressed in Near Eastern garb, two girls on the platform with loose jackets that don't entirely conceal their breasts or the fronts of the upper parts of their bodies, with hair-dos that have a very startling resemblance to American girl hair-dos of the present day and a Near Eastern

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2542 audience in which there is a soldier, apparently an American soldier, cigarette in mouth, holding up money, and a tank in the background showing that this is near the scene of recent military operations, and under this appears the words: "Sold American."

Do you say that this depicting of a Near Eastern slave market in women has no immoral sexual connotations? A. Yes, I say that.

Q. What would the soldier do with one or either of these women when he bought them? A. How do you expect me to know what the soldier is going to do?

2543 Q. I see. You don't think he would do anything with them. He couldn't take them to his barracks, could he? A. No, he may be taking them out for an ice cream soda or taking them out in the park to sit down and talk. He's homesick and wants to see an American girl. You can't blame him for that.

Q. Do you think these are American girls? A. They might be English, they might be French. Judging from the faces, I don't think they are Turkish.

Q. They are not in American or English costumes. They apparently have on trousers, do they not? A. They have trousers.

2544 Q. Yes. There is a line showing where their legs— A. But nothing offensive is shown about them. I don't see anything that is lewd about their make-up here.

Q. Do you understand it is the practice even in North Africa to auction off American girls? A. In North Africa?

Q. Yes. A. I wouldn't know. If it is, it will probably be changed very quickly.

Q. Of course, you wouldn't know either whether this soldier is married? A. There is no way of finding it out from looking at it. I don't see any wedding ring on his finger.

Adron Eiseman—for Respondent—Cross.

Q. Doctor, look at page 105 of the August issue, the cartoon in the lower right hand corner. A. Yes, I see it.

2545

Q. That shows the man on shore— A. Yes.

Q. Clinging to a tree and the sailor in the small boat paddling toward the shore and four husky grinning black women in the background and underneath "Thank God, help at last."

Do you think that has any indecent sexual connotations?

A. Absolutely not.

Q. What do you think the man is so glad help is coming for? A. Well, if I were there I would want help from such looking things. I don't think that anybody can see any sexual relationship, especially with mugs like that.

2546

Q. Now, refer to page 65 of the September issue. There we have a full page cartoon showing the husband leaning out the kitchen door with an apron on and the milk girl, a rather husky figure—you might call her buxom—and she is red-haired, and underneath that: "Come back later sweet—my wife hasn't left for the factory yet."

Do you think that is a ribald or intended to be a ribald joke, making light of the marriage relation? A. No, sir; I don't read that in it. It is the old story about the milk man, which is so old, as old as the hills.

Q. Do you say antiquity lends respectability to filth and indecency? A. By no means, but I can't read into this picture or see in this picture anything immoral. I don't know what is in his mind. He may want to play gin rummy with her, but there is nothing here saying that they are going to have any illicit relationships.

2547

The picture does not show it. It is a cartoon; there is nothing obscene about it.

The fact that the girl is a little buxom—there are buxom girls in the world—but she is completely covered, absolute-

Aaron Eiseman—for Respondent—Cross.

2548 ly nothing to see that would in any way stimulate sex thoughts in anybody looking at the picture.

I can't see anything that is immoral to any average mind.

Q: Doctor, do you remember the verse or whatever you want to call it on page 141 of the July issue, "Dog's Worst Friend?" A. Yes, I remember that.

Q. And is it your testimony that there is nothing filthy about that? A. Nothing filthy whatever.

Q. No filthy connotations? A. No, sir. You are right up my alley when you come to dogs. I have a dog, my best friend.

2549 Q. And you sympathize with the writer of that verse? A. I sure do, and I don't think there is anything immoral that is going to suggest to any human being any sexual thought or act or lower his morals by reading it.

It is probably a good representation of what great dog lovers feel about the way some of these women act towards their dogs when they cut their tails, these French poodles and all that.

If we could only know what the dog is thinking of as well as the master.

Q. Doctor, did you read the "Star and Garter Blues" article in the January issue? A. Yes, sir.

2550 Q. Do you recall the statement in that review announcing that there were certain orgiastic dances in that show? A. Yes.

Q. Do you think it is entirely unobjectionable for a show currently appearing in New York to be advertised in that way? A. Yes, sir.

Q. Did you see the show, sir? A. I didn't see the show, but I don't think there is anything in this article, which is just a man's dramatic criticism of the show, nothing obscene in the description or the reporter putting it on paper.

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I should say the show may be immodest in many degrees, but not the reporting of it, and that's all you have got here.

2551

Q. I see. Now, refer to the November issue of Esquire, pages 94 and 95. Did you read these jokes or alleged jokes, Doctor? A. Yes, sir.

Q. I call your attention to the first one, item 44, beginning at the bottom of the first column of page 94. It tells the story, doesn't it, Doctor:

"The corporal was going home on a furlough and was lucky enough to have a Pullman reservation. When he got ready to retire and pulled back the curtains to climb in his berth, he was astonished to find two luscious blondes reposing there. He carefully checked his ticket, reservation and berth number to make sure he wasn't wrong, then said: 'I'm deeply sorry, ladies, I'm a married man—a man of respect and standing in my community. I cannot afford to have a breath of scandal touch me. I'm sorry—one of you girls will have to leave.'"

2552

Would that imply to your mind that he intended that the other girl, the luscious blonde, should remain and share the Pullman berth with him? A. No, sir.

Q. What does it imply to your mind? A. Well, I would say that it is the corporal's way of cracking a joke, a soldier's way of cracking a joke. I consider it just a wise crack. There is nothing immoral here. He doesn't say that he went into the berth with her.

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Q. You don't get any such implication? A. I don't get any. It is a joke of a corporal, a soldier, trying to be funny. I wouldn't think it was indecent.

Q. Nothing whatever indecent about it? A. I don't think it is indecent.

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2554

Q. Nothing reflecting upon the sanctity of marriage? A. No, sir.

Q. Now, look at item 15. That is the second from the bottom on the fourth column, page 94. A. Yes.

Q. That is where a woman is talking to a man and the man says: "I see your husband has been promoted to a master sergeant. I suppose he's brilliant and knows everything."

And she says: "Don't fool yourself. He doesn't suspect a thing."

Does that imply any illicit relation between this woman and man talking? A. I don't think so.

Q. Item 24, that is the top item in the second column of page 95:

"Home on furlough the soldier was surveying his sweetie whom he hadn't seen in months: 'Slimmer, aren't you?' he asked.

'Yes,' she replied, 'I've lost so much weight you can count my ribs.'

'Where', asked the G. I., with a gleam in his eye, 'do I start?'

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Do you say there is no indecent connotation to be had from that joke? A. I wouldn't read it that way. I don't know why you should overemphasize "gleam in his eye," and I don't think there is anything obscene in it.

Q. Well, why did he have a gleam in his eye at all, Doctor? A. I don't know why he had a gleam in his eye.

Q. Did he anticipate the pleasures of making a manual excursion over this young lady's anatomy? A. I wouldn't go so far as that. That would be the extreme idea. He might have liked the girl and gone out with her and not necessarily had illicit relations.

Q. But he said, "Where do I start?" Did he mean where

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in the city, or where on the person of the young lady? A. I don't think it implies that. I think it is reading things in it that I can't see.

Q. Now, look at item 27. Have you read this joke? That is: "The beautiful Army hostess, newly arrived in camp, thought she would take a nude dip in the clear blue lake while the men were out on drill and no one was nearby."

A rookie K. P. went for a bucket of water and found her and she came out of the water finally and seized a dishpan which she held in front of her and it winds up:

"You wouldn't have such a smirk on your face if you knew what I'm thinking," and he answered: "Oh, I know what you're thinking all right, you're thinking that pan's got a bottom in it."

What portion of this lady's anatomy do you think that joke or alleged joke refers to? A. I can't tell from this joke what part.

Q. You couldn't tell? A. I can't tell.

Q. You can't see that at all? A. I don't see the joke at all and I don't see anything obscene in the mere joke itself. I don't see how anything can rouse any sexual thought in a little story like that.

Q. I see. Well, look at the buck private one a little further down in that same column:

"I'm afraid we can't have much fun tonight. All I have left of my pay is some small change."

Do you think the kid brother would have to have the \$5 bribe to go to the movies? A. I don't think so. That is an old story of giving Johnny a quarter to get out of the room so the folks can spoon. It doesn't mean that the boy is going to have any illicit relationships with that girl when he gives the boy the \$5 to get out of there so he won't be there while they are talking or holding hands.

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Aaron Eiseman—for Respondent—Cross.

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Q. Item 31:

"Pardon me, Miss," said the sentry, "but it's against regulations to swim in this lake."

"Well, for heaven's sake," exclaimed the maiden, "why didn't you tell me before I undressed?"

"It ain't against regulations to undress, lady."

Do you think that is an indecent implication there in that joke? A. Positively not.

Q. Not decent? A. It is not indecent.

Q. It is not indecent to conjure up in words of this sort a picture of a young lady in the nude before a young soldier? A. No, sir. We forget that during the war there are going to be an awful lot of things that soldiers say and soldiers do that 25 years ago would have been considered immoral.

They have a new vocabulary that we never dreamed of. Some of them may be a little off-color. We are not going to ostracize them for saying these things. Most of these are soldiers' jokes and we must look on them as soldiers' jokes.

My boy went in the Army and he never knew a curse word and he came back after a month and he began to cuss like an old general.

2562

You get in the Army a month and you will learn how to swear words you never heard before. Get in touch with a couple of sergeants and see how they educate you on cuss words.

Q. We are seeing a tendency to break down moral standards, aren't we? A. It has a tendency to break down everything and I think, Mr. Hassell—

Q. And you— A. May I add this word, Mr. Hassell? Religion and education for hundreds of years,—what have we tried to do? We have tried to put love where there is hatred and human brotherhood and amity where there is

Aaron Eiseman—for Respondent—Cross.

enmity. We have been doing that in prayers and sermons and books and stage and everywhere, and here a war comes along and we deliberately say to these millions of boys who are being trained in the camps, "We want you to hate with a hatred so great that you shall murder and massacre every enemy that comes in contact with you."

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Overnight we have destroyed what we have tried to do for centuries and the only hope we have is that when these boys come back that they will lose all of that hatred and antagonism that we are definitely trying to plant into their fine hearts. It is a terrible condition.

You say that war threatens to diminish the morals of our boys. It destroys everything, not only morals but religion and all the finest ideals that mankind has ever cherished and treasured.

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Q. Would you say that when these boys come back, like, for instance, when yours came back, that we would like to have them forget and put out of their minds some of these salacious and obscene jokes that take place in certain parts of the Army? A. If they are very bad. I think we would rather that they would get back to the nicer things. Of course we would, everybody would, society would. It is going to be a hard problem to do those things, but I think if we try we may succeed.

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Chairman Myers: We will take a little recess at this moment.

(Short recess.)

Chairman Myers: Let us resume.

Aaron Eiseman—for Respondent—Cross.

2566

By Mr. Hassell:

Q. Doctor, I call your attention to the cartoon appearing at page 49 of the October issue of Esquire. Would you take the gentleman standing in that cartoon in the spats, cane, gloves, hat, muffler, topecoat, and the glaring eye, to be the husband of the woman seated in the lap of the fuel oil man? A. There is nothing in the picture to show that he is her husband.

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Q. Underneath it it says: "Hello, dear, here is the gentleman who sells us" u-s., "our fuel oil." A. It doesn't necessarily say he is the husband. They may not be married.

Q. I see. They might be living together without being married? A. There's a possibility; it is done, you know.

Q. Even if that were so, would you say that this cartoon does not have any illicit sex relation connotation? A. I see nothing obscene in the cartoon. A fuel man. Nowadays with fuel one of the luxuries of life, she is just making a little love to the old fuel boy. Maybe she will get some more fuel out of him.

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Q. You think it is perfectly all right? A. I think it is a cartoon and there is nothing obscene, immoral or lascivious in the thing or that will in any way arouse any sexual—that is, our emotions in any way.

Q. Now look at the picture on page 89 of the August issue. This is the "Paste your face here." A. Yes, sir.

Q.—picture. A. Yes.

Q. You think there is nothing obscene and indecent about this? A. Nothing whatever.

Q. I see. A. I have for my judgment—I think there are three pictures like this, one for the Army and the Navy and the Marines. I think the purpose of the editor's—

Q. Where are those pictures? A. Somewhere around. I think somebody told me—

Aaron Eistman—for Respondent—Cross.

Q. You mean in Esquire? A. Yes, in Esquire, three pictures.

Q. Counsel called your attention to those when you were preparing to testify, didn't he? A. No, I looked through these pictures. They didn't call my attention to these three pictures.

Q. You say someone told you? A. No, I didn't say someone told me.

Q. You started to say someone told you. A. No, I said that I had seen three pictures, one for the Marines and the Army and the Navy; and there is nothing obscene or indecent about them. You see it at the seashore where the girls get on the fellows' shoulders and play piggy back with them, and I think the purpose of these pictures was to give the soldier an opportunity to have a little fun and they do have fun. They paste their face there and send it to their friends and I don't see that there is any sexual implication whatever.

Q. Doctor, is there any standard of morals or decency which is unchangeable? A. Standards of morals?

Q. Yes. A. It is changed territorially. The standards of morals for America are not the same standards of morals, let us say, in Japan. When a woman's hair fell in Japan, it was considered obscene and she ran away quickly.

Q. Now, let us say— A. The woman whose hair falls in America, there is absolutely nothing to it. The morals of people change.

Q. Let us come back to the Tenth Commandment and not wander off to Japan. A. But you asked me a question whether the morals are changed and I just told you that territorially even morals are changed and for different degrees. What may be obscene or immoral in one country is considered perfectly normal and not immoral in another country.

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Aaron Eiseman—for Respondent—Cross.

2572

Q. Now most of the people in this country believe in the Tenth Commandment, do they not? A. They believe in that. They don't, perhaps, carry them out but they believe in them, I think. There are some revolutionary people who throw the Ten Commandments out of the window. I wish they all believed them anyway.

Q. Now, which one of the Commandments says: "Thou shalt not commit adultery"? A. The Seventh Commandment.

Q. The Seventh Commandment? A. Yes.

2573

Q. Isn't it a fact that it is the same today as it was when it was given to Moses on the tablet? A. The same Commandment.

Q. Now, isn't adultery just as indecent today as when it was given to Moses? A. Yes, sir.

Q. Does tolerance of illicit sexual acts or relationships change the fact that such things are still immoral? A. I don't get the significance of your question.

Q. Does tolerance of illicit sexual acts, thoughts or relationships change the fact that such things are still immoral? A. It does not change it. You mean the adultery, the Seventh Commandment, you are referring to?

2574

Q. Illicit sexual acts. A. Leading to adultery, you mean, or adultery? In reference to adultery?

Q. Adultery and fornication and coveting a neighbor's wife or a maid servant. A. Well, coveting a neighbor's wife is not an immoral act. I wouldn't call that immoral; it may be a mental idea; but it is not immoral, I would say.

Q. But taking your neighbor's wife would be, wouldn't it? A. Taking her?

Q. Yes. A. And having immoral relations with her?

Q. Yes. A. It would be considered immoral but merely

Samuel A. Weiss—for Respondent—Direct.

coveting, that is mentally coveting her, I wouldn't say it
would be an immoral act.

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Mr. Hassell: I think that is all.

Mr. Bromley: That is all, Doctor. Thank you.

(Witness excused.)

Mr. Bromley: Congressman Weiss.

Whereupon,

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SAMUEL A. WEISS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

Q. Your name is what, sir? A. Samuel A. Weiss.

Q. And where do you live? A. Glassport, Pennsylvania.

Q. You are a Congressman, are you, from Pennsylvania?

A. Yes, sir.

Q. Tell us from what district you are from and how long you have served as a Congressman. A. The 37th district of Pennsylvania, now the new 30th district by re-apportionment in the State of Pennsylvania. I am now serving my second term.

Q. Now, you have had a great deal of experience, Congressman, in the world of sports in this country, have you not? A. Yes, sir.

Q. Will you tell the Board about that, please? A. Well, through high school I played baseball and football and entered Duquesne University in Pittsburgh and played foot-

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Samuel A. Weiss—for Respondent—Direct.

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ball there; captain of the football team in 1923 and the baseball team in 1924. I am a member of the Eastern Inter-Collegiate Football Officials Association and referee high school and college football games, and I am a referee for the National Professional Football League for the past two years; college and high school games for the past twenty years.

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I am on the Athletic Council of Duquesne, having been appointed by Father J. J. Callaghan in 1934. I am connected with youth clubs. I sponsor two organizations personally, baseball and basketball teams in my community and have for the past eleven years. I am identified with the youth advisory group and the youth group in the city of McKeesport and the Boys Club there, and on the directorship of two other boys clubs for seven, five and three years.

I have been actively engaged in sports. I refereed the football game last Sunday between the Washington Redskins and the Chicago Cardinals.

Q. In Washington? A. Yes, sir.

Q. Do you go around the country a great deal and referee games? A. I do; Washington, Green Bay, New York, Philadelphia, all over.

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Q. So would you say as of today you are reasonably well acquainted with the current moral standards of athletic youth in this nation? A. I should say so.

Q. Do you think as a public official that you have a reasonable degree of acquaintanceship with the sports public in so far as morals and morality are concerned in the magazine field? A. I think so.

Q. Now, have you, at my request, examined all of the material complained of in the Esquire magazine, the eleven issues for 1943? A. I did and I went over some of them.

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Q. Did you look especially at the Varga girl drawings contained in those issues? A. Yes, I did.

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Q. Now, will you tell the Board whether, in your opinion, you believe there is anything indecent, filthy, lewd, lascivious or obscene about any of the Varga girl drawings or their verses? A. Absolutely not.

Q. Do you have any contact with service men here in this country? A. I visited 16 camps in the country as a member of Congress and with groups personally; I have spoken to the sailors at Norfolk; I have addressed a crowd three different times at Fort Meade; I have talked to about, I would say, four or five thousand soldier and sailor boys, and I communicate, a personal hobby of mine, with, I would say, 50 or 60 soldiers every single week. I write letters to them in New Guinea and Guadalecanal and all over Africa, England, and all over the world; personal letters; not type-written letters. I drop personal notes to these kids and boys whom I have known in college through playing football and in my association in life.

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Q. Do you think that there is anything in the Varga girl drawings or verses which would tend to corrupt the morals of either the service men in this country or the football or athletic boys in this country? A. Absolutely not.

Q. Did you serve in the last war, sir? A. No, sir; too young.

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Q. Do you think you are reasonably familiar with the standard of humor now current with our soldiers in this country? A. I think so.

Q. You think one result of this war has been to bring about an accomplished and impending moral breakdown in this country among the men of soldier age? A. Absolutely not.

Q. You think that the circulation of a magazine such as

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Esquire, as you are familiar with it, has any tendency either among the service men or athletic boys in this country to lower their standards of right and wrong or to corrupt their morals?

Mr. Hassell: I object. The same objection I have made before. This witness, I submit, is not qualified by the questions that have gone before to give an opinion which would be of value to this Board and it is outside the issue.

Chairman Myers: The objection is overruled.

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The Witness: I would say absolutely not.

By Mr. Bromley:

Q. I want to show you this cartoon which is a service man's cartoon in the August issue, "Paste your face here," on page 89. Have you examined that picture? A. I have.

Q. Do you find anything obscene, indecent, or filthy about it? A. Absolutely not.

Q. I want to show you also in the August issue this cartoon in the left-hand corner of page 90, "She came directly from the wedding—boy! That's patriotism."

What is your opinion with respect to the propriety of that cartoon? A. I don't think there is a thing indecent, lewd or obscene about that picture at all, but that cartoon is mild compared to some I have seen in Life and other magazines. I don't think that there is a thing that a person can find wrong with it, even that an abnormal mind can draw any abnormal conclusions from that picture or cartoon.

Q. Did you examine this double page spread in some of the issues, particularly November, entitled "Gold-bricking with Esquire," being excerpts from service men's papers throughout the country? A. Yes, I read them.

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Samuel A. Weiss—for Respondent—Direct.

Q. Did you read the first joke entitled "The corporal was going home," and ending up "I'm sorry, one of you girls will have to leave"? A. Yes, I read that.

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Q. What is your opinion of that joke, as to its decency or lack of it? A. There is certainly no indecency in that joke. This is an ordinary joke.

Q. Did you read this joke: "I see your husband has been promoted to a master sergeant" and ending up with "Don't fool yourself; he doesn't suspect a thing"? A. Yes, I read that.

Q. What is your opinion of that joke? A. Well, I saw the same joke in a magazine issued by the Massachusetts Institute of Technology, in one of their school publications, and I read it,—I don't know whether it was the Yank magazine or a soldier publication, the very same joke. I don't think there is anything obscene about it at all.

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Q. And this joke over on page 95: "Have a good time at the party, daughter dear, and be a good girl."

"Make up your mind, mother."

What is your opinion about that? A. Just a good joke.

Q. Is there anything obscene about it? A. No, sir.

Q. And the next joke: "I'm afraid we can't have much fun tonight. All I have left of my pay is some small change.

"Well, how much do you think it takes to send my kid brother to the movies—a five-dollar bill"? A. A darn good joke that will bring a good laugh from any soldier.

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Q. Do you think the publication of jokes like that has any tendency at present to lower moral standards either among the soldiers or among the civilians at home? A. I think jokes like that build the morale of soldiers up. The captain who asked me to address the boys at Camp Meade said: "We don't want a speech." He wanted some darn good jokes. They went through a grueling set of maneuvers

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2590 that day and they were getting ready to go to the replacement center. That is the thing that builds the morale.

Q. Do you have the same opinion about the joke about the three girls who went swimming with the camouflaged soldiers on the bank and the caption "You're sure there are no soldiers around here"? A. Absolutely.

Q. Do you have the same opinion as to the joke below it ending: "The answer came quickly, 79. Darn it"? A. Yes, sir.

2591 Q. Now, will you look at the cartoon in the May issue, the airplane spotter, and one of them saying: "She looks more like a B-17 than a P-40". What is your opinion with respect to that cartoon? A. I can't see a thing that is either lewd, lascivious, or obscene or even in bad taste about that cartoon.

Q. I show you— A. Mind you a person with an abnormal mind would have to be darned abnormal, I don't care who it is, whether it is a college professor or not, but anybody can take a picture on the wall and he can read into it anything he wants to, but not in that.

Q. I show you the picture of the airplane spotters on the roof. A. Nothing different in that.

2592 Q. Do you think that is the same thing? A. The same conclusions I just gave you a moment ago.

Q. Do you think the general publication of cartoons like that would tend to lower the standards of right or wrong or tend to corrupt any part of our population with which you are familiar? A. Absolutely not.

Q. And this joke in the September issue, under "Gold-bricking with Esquire" on page 87, at the bottom of the third column: "Would you like to see where I was operated on for appendicitis?

"No, I hate hospitals".

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What is your opinion with regard to that joke? A. Nothing obscene or lewd or leading to any improper conclusions from that joke.

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Q. Are you familiar with the Sultan cartoons which are repeated to some extent through these eleven issues, like the one in this issue? A. I saw quite a number of them in there.

Q. What is your opinion of this cartoon: "What am I bid for this 100 pounds of sugar?" A. I don't see even a thing the matter with it. That one in particular.

Q. Do you think that would have any tendency, or other Sultan cartoons of a similar nature, with respect to selling women, to corrupt morals or lower the standards of right or wrong? A. No.

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Q. Now, based upon your examination of all of these eleven issues and on the material specified also which has been complained of, have you found anything in any of them which in your opinion is obscene, indecent, lewd, lascivious or filthy? A. No; I would say none. There are some things there that might be called a little risque or maybe in bad taste, and I wouldn't publish them, but I wouldn't construe any of these things as indecent, filthy or obscene, any of them, not as bad as you might get in the headlines of a newspaper where you can read about the Errol Flynn trial, or any other trial, much worse.

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That is the tendency of modern American life, to be frank and openly discuss things. Mothers talk to their children of nine or ten years of age when before they hated to talk to them when they were fifteen or sixteen. Kids are reading these things, but to a kid with a clean mind it has an entirely different effect, a nice effect. We think nothing of this today. The average American child I would say is very much like that. Years ago these stories were not con-

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sidered that way, but today they are all right. Our American soldiers are getting clean, wholesome fun out of this. They will be better fighters when they come back, they will be men with strong morals, and we will have confidence in our soldier boys.

Mr. Bromley: That is all.

Cross Examination by Mr. Hassell:

Q. Congressman, how did you come to testify for Esquire?

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A. I am a very close friend of Mr. Dilweg; I have followed Esquire for years, their sports column. I have been also a very close friend of Clark Shaughnessy, and he and Laverne Dilweg have written some of the finest sports articles in the country. Dilweg was a member of Congress and some weeks ago wrote an article about sports in war, and Shaughnessy had an article on that.

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I had subscriptions for seven or eight copies of Esquire for the boys in service; one of them was stopped at the time when he went overseas, and I have been fighting this sports ban for members of the armed forces, and one day Dilweg said to me: "I see where they stopped the magazine", and I told him I happened to be the fourth ranking member of the Post Office Committee and we had two bills with regard to certain mailable matter going through on account of subversive and pernicious literature, going through the mails.

I said: "It is high time to stop this fellow Gerald Smith and those fellows, but I can't see why they are going to stop Esquire using the mails". I think on that sub-committee there was one member that disagreed with that contention, and that is the time when I was speaking with Dilweg and

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he said that they were having a hearing, and he said: "I might ask you to go down".

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I said: "I will be glad and happy to go down and testify".

I don't know anything about Esquire, have no financial or any other connection with them; I came down on my own time and agreed to do it voluntarily; to do what is just.

Q. Is Laverne Dilweg connected with Esquire? A. No, no connection at all, but he did publish an article, and he and I began fighting this sports attack and the ban that the Army put on Army trainees participating in sports.

We have been fighting this problem since last January and Frank Knox, the Secretary of the Navy, told us that we could have trainee participation in sports, but Stimson and some of the others did not believe in it. We were interested in it so that these boys could participate. As Knox said: "I would like to have a whole battleship of football players".

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Well, Stimson disagreed with us; that is, he put a ban on the floor, showing the value of sports. One of my Mulrooney of Oklahoma, we were all fighting trying to get them to set that ban aside, and I made several speeches on the Floor, showing the value of sports. One of my speeches was published all over the country. I said: "If England can play soccer with a hundred thousand people when the Luftwaffe is just a half an hour away, surely so can we", and we had Grantland Rice and Chet Smith, of Pittsburgh, interested in it, and I have in my files nearly 5,000 letters from soldiers all over the world asking me to keep up my fight for sports, and that is where Dilweg and I have been leading the fight.

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Dilweg made this speech on the floor that was published by the Associated Press, I believe, and Esquire picked it up and published it; a very worth-while article. You ought

Samuel A. Weiss—for Respondent—Cross.

2602 to read it. He was former all-American at Marquette and a professional football player at Green Bay.

Q. Congressman, do you consider yourself an expert on obscenity and indecency and filth? A. Oh, I wouldn't say any more expert than you might say reading a lot of those articles, but in reading a lot of magazines, in reading a lot of the modern jokes and the modern stories and knowing something about the modern attitude of people and soldiers and students today, I would say I consider myself probably as much an authority in my activities with youth as anything.

2603 Q. Every man is entitled to his own opinion about those things. A. I would think so, yes. I would say that.

Q. Congressman, have you had connections with an organization known as B'Nai Brith? A. Very active today. I am the national vice-chairman of the war service committee. Next to the president I myself direct the activities from Washington.

Q. Does this organization have a junior organization known as the AZA? A. Yes. I was the advisor for them in McKeesport, Pennsylvania.

2604 Q. Do you feel that the type of material found in Esquire would be helpful in playing up the character of these young men? A. I don't think it would hurt them a bit. I would as soon have a young man look at a Varga girl with probably over-emphasized beauty than to have him sneak around an alley and look at some picture. I don't think it would affect anybody at all.

Mr. Hassell: That is all.

Samuel A. Weiss—for Respondent—Redirect.

Redirect Examination by Mr. Bromley:

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Q. What is the B'Nai Brith? A. The B'Nai Brith, I would say, is the largest Jewish organization in the world. It is one organization today that has purchased \$156,000,000 in war bonds and has made a great contribution to the war effort. It is an organization that does not discriminate between Jews of different beliefs, whether you are an orthodox or a conservative or a reformed. Mr. Maisky is the president of the organization. I myself have held office in the organization for about 15 years and I am now the national vice chairman of the War Service Committee. We have purchased several Liberty ships, we have had 56,000 members, and we have purchased \$156,000,000 worth of war bonds and we have 32,000 of our youths in service.

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In my own group we have 400 boys and we have 116 boys serving all over the world; kids whom I have practically raised up when they were 12 to 14 years old.

Q. You mentioned in your testimony your interest in the Esquire Sports Poll. A. That is right.

Q. I show you the February issue of Esquire, page 86, and ask you if that is an example of the article to which you referred? A. That is right.

Q. Does that regularly occur each month in Esquire? A. That is right.

2607

Q. I have looked through and I notice that it appears in each one of the eleven issues which are before us. Do you know who Herb Graffis and Ralph Cannon are? A. Herb Graffis is probably one of the best sports authorities in the country.

Q. Well, can you tell us something about him? A. I don't know him personally. I never met him personally. I know he has made a great contribution in the sports field.

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2608 Bill Stern on the radio and Red Barbour frequently refer to articles by Herb Graffis. He is considered one of the most foremost sports authorities in the country.

Q. Would you say that this article was devoted to the dissemination of public information in the sports field?

A. Absolutely. The University of Pittsburgh frequently refers to him and Duquesne University has sports articles which refer to him.

Q. In the classes or where? A. In the classes, in the library. They wouldn't permit a book to get in there unless it was permissible. Doctor Bowman or anybody would not allow anything if the material was lewd or obscene or indecent or had anything filthy in it.

The articles in Esquire are referred to frequently.

Q. Is Duquesne University a Catholic institution of learning? A. It is. It is a Catholic institution of learning but anyone is permitted to attend the school. I was probably the first Jewish athlete in history that ever played at the school. I was given fairer treatment by the reverend fathers than probably anyone else. They have given me every honor that anyone can receive at the University.

Q. Now, this Sports Poll, does it regularly attempt to poll the public on matters of sports? A. I think every important question that arises in the sports field is taken up through a poll of public interest. It requires a great deal of work. I know Herb Graffis probably goes to a great deal of pains in getting up the information. I don't know where he gets it, but it certainly reflects a cross section of the American public interest in sports.

Q. I notice his first question in the February issue reads: "Do you think that President Roosevelt should appoint a committee to study the war-time situation of all sports and make recommendations for their conduct during the war,

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on the theory that these sports are of use for the physical and mental welfare of the people?" and then the answer: "Yes; 68.49 per cent".

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Is that the type of question on which public opinion polls are taken in these sports articles? A. That is right. Well, when he first started that poll there was an idea of appointing a committee. Senator Mead and some other men said that it should be done. I was somewhat opposed to it, but the majority were in favor of it and they went ahead with it.

Q. The second question: "Should the public and private golf courses be kept open this year so that the public can play and get as much relaxation as possible, even though play has to be carried on under difficulties, such as walking or bicycling to the links, carrying one's own clubs, etc.; or do you think that all public and private golf courses should be closed this season?"

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And the answer: "Keep open, 97.32 per cent." A. That is right. That reflects public interest. Jack Kelly, the head of our physical fitness program, rides a bicycle when he plays golf.

Q. And the third question: "Can organized baseball still be regarded as an important adjunct of civilian and military morale?"

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And the answer: "Yes, 86.57 per cent". A. And I still agree that we ought to continue all sports during the war.

Q. And I notice the fifth question: "Should professional boxing be allowed to die for the duration or should efforts be made to promote this sport further in order to provide relaxation for war workers and men in the services"? A. That is right.

Q. Promote 70.11 percent? A. That is right.

Q. I notice that this article by these two authors quotes a great many public men. A. Commander Tom Hamilton.

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2614

Q. Who is he? A. Commander Tom Hamilton is one of the great men from the Naval Academy. One of the great football stars of America who has been a great figure in keeping alive the sport picture in the Navy. He is one of those men who fought for the idea, saying that this war is a tough war and you have to be tough in order to carry on. When Tunney came out with the 1-2-3-4, which I am opposed to because you can't build vigorous strong fighting men with 1-2-3-4 exercises in some gymnasium. Football is the greatest builder of rugged men, the rugged physique, and that is what you need to fight a war like we are fighting today, and that is what Commander Hamilton said.

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Q. I notice that he has permitted himself to be quoted in the paragraph. A. Yes.

Q. I notice there other people such as John Batuski, who writes under the first question with regard to President Roosevelt appointing a committee. A. Yes.

Q. Do you know who he is? A. I don't know whether he got All-American mention, but he was a football player at Colgate, either on an end or on the line.

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Q. And R. J. Steinhilper of Williamsport, Pennsylvania. Do you know who he is? A. He is a sport editor on one of the newspapers. Not only he but men all over the country, men whom I mentioned a few minutes ago, have written on this. Grantland Rice's article is very enlightening. Grantland Rice is the national sports figure that we have today, number one, and he has been hammering in his column consistently on the same attitude.

Q. And among those favoring the appointment of such a committee referred to in question number 1 are men such as these: Bill Hillenbrand, Otto Graham, Bob Wiese, Dick Hoerner, Herman Frickey, Pat Harder, Bunkie Morris, Bill Daley, Jackie Field and many others.

Samuel A. Weiss—for Respondent—Redirect.

Who are they? Who are the men whose names I have mentioned and whose names are mentioned here? A. Those are All-American football players now playing throughout the midwest, Michigan, Indiana, and so on; great football players. I think all those men are in the service. I think every single one of those men are Army or Navy trainees today. Bill Daley, I think, leaves next week. Most of those men are in the Marine Corps Training School.

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Q. Do you think that those men would allow the use of their names in a filthy, dirty magazine? A. I doubt it very much. I certainly would not.

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Mr. Bromley: That is all.

Chairman Myers: Any further questions?

Mr. Hassell: No.

Chairman Myers: All right.

(Witness excused.)

Chairman Myers: We will resume at 9:30 tomorrow morning.

(Whereupon, at 5 o'clock, p.m., the hearing in the above entitled matter was adjourned until 9:30 o'clock, a.m., Wednesday, October 27, 1943.)

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HEARING OF OCTOBER 27, 1943.

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PROCEEDINGS RESUMED.

Chairman Myers: Proceed, gentlemen.

Mr. Bromley: Mr. Swing, please.

RAYMOND GRAM SWING, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

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Q. Will you please give us your name? A. Raymond Gram Swing.

Q. Where do you live, Mr. Swing? A. In Washington.

Q. What is your business? A. I am a radio commentator.

Q. Now, will you tell us something about your background, your educational background, and what degrees, if any, you hold? A. My background is chiefly that of a newspaper man. I started out as a newspaper man in a very small way in Ohio and moved around in various positions. I was a correspondent in Europe before the last war, during the last war, after the last war, and I came back to this country in 1934, and I continued in newspaper work and editing, and started radio broadcasting.

I have several degrees from colleges, doctors degrees, and a Master's degree from Harvard, but they are honorary degrees and don't represent work done at those Universities.

Q. At the present time you are broadcasting, are you? A. Yes, sir.

Q. Will you tell us something about that? A. I am a news analyst, discussing chiefly the war, four nights a week

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Raymond Gram Swing—for Respondent—Direct.

over the Blue Network; and discussing American affairs to England regularly every fourth night.

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Q. Does your work require and have you travelled extensively around this country? A. Yes, I have travelled in almost every corner of this country.

Q. Would you say that you were reasonably familiar with the state of public opinion so far as the morals of the United States was concerned especially? A. It would be hard to say what an expert in that field was. I should think I was in fairly close touch with it.

Q. Are you familiar with the magazine Esquire? A. Yes.

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Q. And am I right in assuming that you read or look at large numbers of magazines? A. Oh, yes; I see a great many.

Q. In your opinion, is Esquire a magazine which now or at any time has ever pandered to the prurient taste?

Mr. Hassell: I object, the same type of objection I have made to similar testimony heretofore.

Chairman Myers: The objection is overruled.

The Witness: I always considered Esquire as a magazine which represented in the men's field something similar to the women's magazines in the women's field, which was focused more on men's interests and men's minds, just as women's magazines are focused on women's minds; that it did not pander to anything.

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By Mr. Bromley:

Q. Have you yourself ever written articles for Esquire? A. Yes, I have.

Q. When and what about? A. About three or four years ago, I should say, I wrote three or four articles having to

Raymond Gram Swing—for Respondent—Direct.

2626 do with the last war. Experiences of my own in the last war: experiences which I had come upon in the last war.

Q. Would you write for the magazine today if you had the time and opportunity? A. I would with pleasure.

Q. Now, at my request have you examined what I have told you is the material complained of in the eleven 1943 issues of Esquire? A. I have.

Q. Have you looked at the Varga girl drawings in each of the eleven issues? A. I have.

2627 Q. Will you tell the Board your opinion of the Varga girl drawings from the standpoint of whether in your judgment they are obscene or indecent? A. Am I permitted to retort with a story?

Q. Yes, go ahead.

Chairman Myers: Go ahead and describe it as you like.

The Witness: Your question is so like a question that was asked by Boswell of Dr. Johnson; they were going through an art museum and they passed a painting of a nude woman, and Boswell said to Dr. Johnson: "Do you consider that painting obscene?" And Dr. Johnson said: "No, but your question is." And that seems to me to disclose a whole philosophy, because Dr. Johnson was the most sophisticated man of his time. He knew what obscenity was; he wrote a dictionary. He did not consider the picture obscene but he considered the mind which would direct his attention to the thoughts of another man to be obscene, and in the same way it seems to me that the Varga girl drawings objectively looked at cannot possibly be considered obscene.

Raymond Gram Swing—for Respondent—Direct.

By Mr. Bromley:

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Q. In the expression of your opinion, have you taken into consideration the verses which appear, I think, in connection with each one of the Varga girl drawings? Does that change your opinion in any way? A. I read the verses. I do not see that they are in any way beyond the scope of what I consider a man's magazine dealing with things in terms of men's thoughts and lives.

Q. Now, would it change your opinion at all, Mr. Swing, if it were the fact, as I believe it is, that this magazine although a man's magazine is readily available to any class of our citizens? A. Well, being a man's magazine obviously women are going to read it; more so I should say than men read women's magazines because they think it is more interesting. After being read by others, there is nothing objectionable about the verses, in my opinion.

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Q. Have you any children yourself? A. Five.

Q. What range in ages are they? A. From 12 to 30.

Q. What can you tell the Board about your attitude towards your own children with respect to whether or not you have permitted them to see and read this magazine? A. The magazine is in my home; they have it and read it and are familiar with it.

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Q. Have you ever observed that it had any immoral effect upon them, lowered their standards or injured them? A. I don't think these moral standards are made in magazines or by magazines. Morals are based upon the competence of the individual judging what is right and wrong.

Q. Now, what can you say about current day standards of morality with relation to whether or not these Varga girl drawings violate them or go beyond them in the amount of exposure of the feminine form contained in the drawings?

*Raymond Gram Swin—*for Respondent—Direct.**

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A. Well, it seems to me that the most remarkable thing about the development of social standards is the change that has come over almost all of Western civilization in the last 50 or 60 years.

We have passed out of the hoop-skirt era, we have passed out of the time when it was required that women should wear bathing skirts, and we have come out into what I would call the biped era from the pre-biped era.

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It is now accepted that women, like men, have two limbs, nether limbs, and there is nothing about that that in any way calls attention to them, and pictures like these are completely within the accepted decorum of a large number of people today.

Q. Now, turning for a moment to the textual matters, frequent reference has been made to the poem in the January issue at page 45: "Benedicts Awake!" Do you recall it? A. Yes, I do.

Q. And do you notice the triple repetition of the opening lines, "Men sleeping beside your wives, awake"? A. Yes.

Q. What can you say as to whether or not that reference violates current day standards of morality in the printed word? A. Do you mean to say that it is immoral for a man to sleep beside his wife?

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Q. No, I should think not. What is your view as to whether or not it is immoral to refer to it in a magazine of general circulation? A. That it becomes immoral to refer to a morality?

Q. That might be one view about it. What is your view about it? A. The intimate relations between man and wife is an expression of the most wholesome thing there is. The generative principle behind the universe is present in all of us and reference to it as being in existence, unless it is done to cast filth upon it, in itself passes any high standard of decency, I should say.

Raymond Gram String—for Respondent—Direct.

Q. Do you think this poem could reasonably be construed by anybody as an attempt to cast filth upon the marital relationship? A. It didn't occur to me when I read the poem.

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Q. What is your opinion about the poem and its propriety? A. I think it is proper. I don't think it is particularly beautiful from the standpoint of poetic technique, but the spirit of it is wholesome.

Q. Now, turning to the Varga girl, to a feature which I overlooked, there is one particular verse in connection with the Varga girl in the April issue at page 38 of that issue entitled: "Peace, It's Wonderful", and I direct your attention to the conclusion of the stanza:

2636

"He won't be so lax, believe me,

When the clock upon the mantel points to taps."

Do you think a reference of that kind textually in a magazine of general circulation, exceeds the limits of present day standards of frankness in the field of morality? A: I think my answer to your previous question covers that, if that is an attempt to make it seem somehow wrong to do what is socially right.

It seems to me that the reference there is a particularly straightforward reference to something that everyone knows, and mention of it cannot be considered indecent.

2637

Q. Did you read Gilligan's article entitled: "The Court of Lost Ladies"? A. Yes. I thought it was a very well written piece about a subject which is part of—that is a good instance of the kind of things that can be talked today that could not be talked about 50 or 60 years ago.

It is part of life. Every one knows it is part of life. If you examine it, if you write about it honestly, you know

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2638

it is a problem that requires social action. You cannot have the social action without knowledge, and knowledge of a thing is never in itself corrupting.

Q. Did you think the author, Gilligan, gave a serious treatment to that subject and not a flippant one? A. Oh, very definitely. I thought it was a very fine piece of descriptive writing.

Q. Did you think there was anything objectionable about publishing such an article as that in a magazine? A. Oh, no.

Q. Of wide circulation which might be available to children such as yours in their adolescent stage? A. Well, that raises a basic question of whether a conspiracy of silence is more corrupting than the code of candor and frankness. I should say that in this day we have adopted somewhat unwillingly a code of candor. We find it throughout our literature; we find it throughout our press; we report details of lawsuits, divorce cases, and murders, and Hollywood affairs with a candor unheard of.

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The question then is does candor corrupt more than a conspiracy of silence? And my opinion is that even particularly for an adolescent that a frank wholesome honest acceptance of the facts of things that are part of life is more beneficial to that person than a conspiracy of silence because the conspiracy of silence produces curiosity; there is some over-hanging urge to find out what it is that is not being told, and I think that is more corrupting to an adolescent than being told just what it is and what is to be known about life.

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Q. Would an illustration of what you mention as now being commonly printed in the press be the references which you see from day to day in the Sir Harry Oakes murder trial, about the pre-marital trip of the daughter Nancy with the accused murderer? A. That is the kind of thing that

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is very often carried in the papers, even in the most reputable papers and the papers which pride themselves upon their so-called reputation.

2641

Q. Now, I direct your attention to a page of fiction in the October issue, the story: "Portrait ~~Above~~ the Fire Place". Did you read that story? A. I did, and it is a beautiful story.

Q. Will you give the Board your opinion of that story, Mr. Swing? A. I think that Esquire has published some of the best phases of fiction, and I call that a beautiful story, beautifully written with a beautiful concept of a human being. I mean as a piece of art: I don't mean the man's weaknesses; his dependence on the portrait for moral strength, his moral character, all that made the story beautifully done.

2642

Q. Would you say it was usual for Esquire over years to have printed pieces of fiction which deserve to rank as literature? A. Oh, yes; I think Esquire has probably done much better than its share of publishing first rate artistic fiction.

Q. Would you say that it had a reputation over its ten-year period for having published a very considerable amount of first rate short story fiction? A. Oh, yes; I think it has some of the best writing that has been found anywhere in American periodical literature.

2643

Q. What comment can you make with respect to the articles as distinguished from the fiction? Do you know that Esquire has as a matter of editorial policy in each issue always published from four to six to ten articles of an informative or serious nature? A. Oh, yes. As an old reader of Esquire I know that very well. It has first rate articles; some of them are humorous, but a great many are serious articles. It has articles on sports, it has articles that are going to interest men.

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2644

Q. Were the articles which you did for Esquire about the last war humorous or very serious? A. Oh, serious. The mass content of Esquire has been of a serious nature. That is, you can't just have humor all the time in a magazine such as that and have as many readers. You have to have a base of solid interest and Esquire has always had it. The editors of Esquire have somehow understood that you have to get first-class writing into a magazine and they have done it much more so than women's magazines. I think the writing in Esquire has displayed more artistic taste than that in women's magazines.

2645

Q. Would you say the mass content of the magazine was information of a public character devoted to literature or the sciences? A. Well, I should say that there is always a core of substance of that kind. I would say that the appeal of the magazine is based primarily upon its humors but it has a sound editorial policy to deliver your humor always with a core of substantial content.

2646

Q. Now, I would like to ask you about the piece of fiction in the August number called "Offensive on the Home Front", and particularly two references near the end of that story: one: "He noticed how large the uniform made her behind look", and two: "Once he had slapped a prostitute in Bordeaux". Do you remember the story? A. Yes.

Q. Do you remember those two references? A. Yes.

Q. What can you say about them as to whether you consider them to be obscene or not? A. I don't understand your question? What is obscene?

Q. The charge has been made, Mr. Swing, that the use of the word "behind" in that story and that context, is indecent or filthy. A. If the story had said he struck her on the rump it would have become ipso facto proper?

Q. I have no enlightenment as to that. It has been

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charged that the word "behind" is obscene. What is your opinion about that? A. I lived for a while in England. There is a word in England that you must never use in a parlor, and it is 'bloody'. You must not say "bloody" under any circumstances.

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Now you say bloody here and it is perfectly proper.

These are matters of local usage, but I don't see that the word "behind" has become a matter of even delicacy in this country. It is a word that is more frequently used than "rump" or "buttock".

Q. Would you say the word "behind" in that connotation, to mean the rear end of a man or woman, is accepted in all society in this country? A. It is not the most proper piece of verbal selection, but it communicates the idea and I think it is even preferred in a drawing room to the words "rump" or "buttock".

2648

Q. What about the word "fanny", to indicate the same portion of the body? A. That is slang, too, and I think somehow or other there is a connotation there that makes it a little bit less delicate than "behind", but it is a question of delicacy and not propriety.

Q. And certainly not of indecency? A. Oh, good Lord—that is, unless the buttock is indecent?

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Q. And do you think the reference to the husband in the story, in connection with his having slapped a prostitute—using that word—in Bordeaux, is an indecent or filthy reference? A. It is a statement of fact. Is the fact indecent, do you mean?

Q. Is the use of the word "Prostitute" in that story indecent? A. You raise again the whole issue: Are we going to know what happens in the world, or are we going to have a conspiracy of silence about it. I am for candor, myself.

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2650

Q. Now, I would like to call your attention just for a moment to some of the Army jokes which are published in the magazine, and particularly this one in the November issue of Esquire, page 94, about the corporal who discovered two luscious blondes in his berth and said one of them would have to leave.

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Do you consider that a joke such as that, printed in a magazine such as Esquire, has any indecent, filthy, lewd or lascivious or obscene connotation, or what do you think about the publication of such a joke as that? A. My first response is that it is funny. I think it is a funny story, and when you start to analyze humor—all of us are people who live in a society in which we are taught to repress certain predilections, let us say, and the consistent repression of those predilections constitutes good social behavior, but the repression of them does not annihilate them, they are there and psychologists will agree they will try to come out.

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Humor is very often a way of expressing those things which is a counterpart to the repression of them and, therefore, helps. You go and see a comedian on the stage smack somebody with a stick. Well, I can't smack my colleague that I don't like with a stick. Therefore, I have a good laugh to see the comedian smack somebody.

Therefore, I put this in the category, if you don't probe too far into it it is good humor. The minute you start probing too far you get into the repressions that are not in the humor at all.

But humor is the expression on this plane of the experiences of the subconscious mind.

Q. Do you find anything obscene or indecent in that joke?
A. No.

Q. Now, without making specific reference to the other

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material, I want to ask you whether generally you found anything in any of the eleven issues, texts, and pictorial, which in your opinion was obscene, filthy, indecent, lewd or lascivious? A. I will confess that when I went through these things one by one with all the citations marked, I was astonished in the first place because it seemed to me the great mass of them didn't even border on the place where the editor would want to discuss it, as to whether or not this might be considered by some few people as indecent.

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It seemed to me in most of them you have to look very hard.

And then there were certain cases where I understand that there might be some people who would question the propriety of putting it in a magazine. I wouldn't myself have omitted some of them from the standpoint of obscenity. I don't think some were particularly good humor, up to the standards of Esquire, but that is not the issue, I believe.

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Q. That is right. So you found nothing that was indecent or filthy? A. No.

Q. And is it in your opinion material that is accepted by our present day standards of morality? A. Yes, in a magazine which is known and considered as a magazine for the interests of men primarily.

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Mr. Bromley: That is all.

Cross Examination by Mr. Hassell:

Q. Mr. Swing, in your broadcasts do you use the word "behind" or these other words referred to in Esquire, over the radio? A. No, I don't.

Q. Why don't you? A. Because I am not writing. I am talking over an instrument that goes into a very large number

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2656 of homes which cannot be shut off until after something has been done, whereas a newspaper or magazine cannot be read by children of five, six or seven years of age. The person who has a magazine or newspaper can keep it away from children if he wants to.

I think it would be an invasion of the right of the parent to choose what his child should hear if I should put those things into the home before the parent knew it, but I don't think the two cases are in any way comparable because the mediums are not comparable.

2657 Q. I see. You think it is perfectly proper to put these double entendre jokes, questionable pictures and cartoons that reflect upon the marital relation, in a publication distributed freely through the United States mails and sold on pretty near all the newsstands, but you don't think it would be proper and decent for you to employ that kind of material in a broadcast? A. You are putting words into my mouth. I have not said it would be proper or decent. I said it would infringe upon the right of the parent to choose what his children should hear.

Q. If it is decent why should the parent have any right about it? If those thoughts are decent, why should the parent be considered? A. I am talking about my right to determine for the parent how he shall bring up his children. It has nothing to do with what I consider decent or what the parent considers decent.

Q. In other words, you think these words in this type of joke and picture and cartoon are perfectly decent and that they should be allowed to go in every home because they state the facts of life. Is that right? A. I say that the freedom to circulate that magazine is according to our, current standards of decency, yes.

Q. As a newspaper man you resent the idea that anybody

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should put any restrictions on what is said or written, don't you? A. No, I don't resent a censorship of certain things, certain kinds of things.

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Q. Do you set yourself up, Mr. Swing, as an expert on obscenity, indecency, lasciviousness and filth? A. I never knew that I had.

Q. You don't intend to do that now? A. I don't set myself up at all. I have been called as a person conducting a known profession in this community to give my opinion.

Q. How did you happen to be called as a witness in this case? A. Mr. Gingrich is the editor of Esquire and is an old friend of mine and a valued friend of mine, and asked me if I would look over the material which had been cited and give my opinion about it.

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Q. Since you have been a subscriber to Esquire for some time you have thought for years that the material in it is perfectly all right? A. Yes.

Q. Not questionable at all; is that right? A. Yes.

Q. Would you say that Esquire has the reputation of being spicy and a little off-color? A. I would accept the word "spicy". I don't know that I would accept the word off-color.

Q. Well, why does it have the reputation for being spicy?

A. Because it has humor and it is men's humor.

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Q. Men's humor carrying jokes, pictures and cartoons that deal with sex? A. To some extent, certainly; just as man's life deals to some extent with sex.

Q. And carrying pictures such as the Varga pictures which appeal or are designed to stimulate the sex urge in man? A. Well, I don't know that they are designed to stimulate the sex urge in man.

Q. Would you say that they are art, Mr. Swing? A. Not of a high type, no.

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Q. They are not held out in the magazine as art, are they?
 A. No. I think they are very skillfully done; they are skillfully drawn and I think they have taste in their drawings. To say that they are Titians and Rembrandts would be absurd.

Q. Would you make the statement that the filmy costumes in which a number of them are shown are put on to add to their salacious appeal or to conceal nudism? A. I didn't hear the question.

Mr. Hassell: Read the question.

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(Question read.)

The Witness: I don't think that they are put on to add to salacious appeal.

By Mr. Hassell:

Q. Mr. Swing, did you hear the recent statement over the radio by Red Skelton to a woman on the program: "Let us read Esquire and blush together"? A. No, I didn't hear it.

Q. Would you subscribe to that sentiment? A. No; except as humorous. It might be that he was trying to make a joke about it.

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Q. You don't think that is the general opinion of the public as to Esquire? A. No, definitely not.

Q. Now, your attention was called to this story of the two luscious blondes in the Pullman berth and the married man who had a reputation in his community for uprightness, finding them there and telling them that one of them had to leave. You referred to that, I believe, as a funny story. Why is it funny? A. Well, I went into a lengthy

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explanation of why I thought that was funny? I will repeat it if you wish, but I don't really think it is necessary.

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Q. I haven't heard you say why it was funny. I heard you say it was funny. A. Well, to go back to my concept that all human beings have most of the elements in them, and if we live in society, society requires us to repress certain predilections, I call them, in our life.

Q. What predilections? A. Well, the predilection to murder and a predilection to all kinds of violences and forth right expressions. We are anxious to repress them, and the humor very often becomes a means of expressing those repressions in a delightful way and reflects simply that we are and must be repressed individuals to a certain extent, and I gave the instance of the comedian on the stage who hit another man with a stick, which expresses my feelings that I can't express myself perhaps towards someone that I don't like, and I laugh at it and I think it is funny.

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Q. What is the predilection here that is being repressed? A. Well, there is a tendency in our life towards anti-social anarchy in all of us. We don't live in society because we are born that way; we adopt these repressions so as to maintain social life.

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Q. Would you say that the predilection pointed to here is the general predilection of the average normal American married man to commit adultery? A. Well, I don't know when you are talking about adultery—whether you are talking about a legal fact, aren't you, and I don't think men have predilections to legal facts. I think they have predilections to natural expressions.

Q. Well, we won't confine ourselves to the legal term, but the fact is that the man has indicated he is married and he has indicated he would go to bed with one of these

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persons, hasn't he? A. There again your monogamy is not a concept that is in the atavistic human being. The sexual expression, and I think all that is expressed in this story is that, and it is entirely on the humorous plane. The repressed and disciplined individual who conforms to social requirements.

Q. Now, you think it is perfectly decent and proper in a magazine enjoying subsidies from the United States Government to carry jokes of that kind which imply improper conduct by a married man with an unmarried woman? A. Well, if somebody went around with every issue of the magazine and sat down and said: "Please study this. Doesn't it mean that somehow or other there is going to be an immoral act" and draw attention to it and destroy the humor then I would question it. But as a piece of humor it is harmless.

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Q. You said if you did not probe too far into this story it would be considered humorous. It would not be if you gave too much thought to it, would it? A. Too much of what I might call obscene thought.

Q. Well, what is the natural thought that would follow to the natural normal man, a story like that, Mr. Swing?

A. To laugh.

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Q. To laugh about what? A. Laugh about the story and then he has expressed something which I would say is socially repressed in him and that is the purpose of humor. The minute you start taking humor apart like a fly you destroy it and then the whole thing has a different connotation. The connotation is not there until you destroy it.

Q. The opinions you expressed are your own, purely?
A. Why, certainly.

Q. You do not represent them to be the opinion of the American people as a whole or any part of them? A. Well,

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I supposed I was put on here to give my personal opinion about things. I am not a member of any organization testifying after a meeting, which passed a resolution, and then asked me to express the sense of the meeting, no.

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Q. Do you think you are competent to gauge the sentiment of the American public as a whole and determine what the average man wants or what his reaction is to material of this sort? A. I suppose no single individual is competent to do more than express his general judgment as to what people as he knows them feel or think about any issue. He can't ever be encyclopedic in his knowledge about what people think.

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Q. Mr. Swing, do you subscribe to the theory that there is no such thing as obscenity except in the mind of the individual? A. No. I do not subscribe to that theory. Things may be definitely obscene, obscene representations which are intended to be obscene and which are circulated for the purpose of gratifying an obscene desire.

Mr. Hassell: That is all.

Redirect Examination by Mr. Bromley:

Q. I don't understand that last answer. You say you do subscribe to the theory that there may be such things as obscene things deliberately circulated? A. Well, to be frank about it, the so-called French post-cards, the so-called Japanese drawings which are made by I call dirty-minded people to interest dirty-minded people.

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Q. That is what I thought your answer meant, but I was not sure it was so phrased. In other words, you believe that there can be this material, pictorial material, which is obscene and which is circulated by dirty-minded people for

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2674 the deliberate purpose of pandering to the prurient in people? A. Yes.

Q. Now, you do not consider that any issue of Esquire or anything in the issues, so far as you have examined these eleven issues, comes within that classification, do you? A. No, I do not.

Mr. Bromley: That is all. Thank you, very much.

(Witness excused.)

2675 ERNEST OSBORNE, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

Q. What is your name, please? A. Ernest Osborne.

Q. You live where? A. New York City.

Q. What is your address? A. Home address?

Q. Yes. A. 106 Morningside Drive.

Q. What is your business or profession? A. I am a college professor.

2676 Q. Where? A. Teachers College, Columbia University.

Q. Will you tell us something about Teachers College so we can know what kind of institution it is, please? A. Teachers College I think can be fairly characterized as a professional institution. Our student body comes from every state in the Union and it is primarily for the training of graduate students in the field of teaching education, public health nursing, religious education, and other essentially educational professions.

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Q. How long have you been a professor in that college?

A. I think my professorial rank began back about twelve years, but I have been connected with the institution about seventeen years in one capacity or other.

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Q. Where did you go to school? Will you give us the background of your education? A. In higher education?

Q. Well, yes. A. Pomona College, a Southern college, a small liberal arts college, Bachelor's degree there. Doctor's degree at Columbia University in the field of psychology.

Q. Have you ever done anything other than teach, Professor? A. Yes, sir; I have been a camp director and at the present time I am doing some administrative promotional work for the University and the State of New York in Harlem on problems of delinquency.

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Q. About when did you start to teach? A. I started teaching children in 1927 in the elementary school.

Q. When did you start in college? A. In college teaching?

Q. Yes. A. 1930, 1932. I don't have these figures straight. It goes too fast. It has been since 1932, approximately.

Q. Now, with what age groups has your experience been, Professor? A. Well, my experience has been with youngsters as young as two up through the whole adult field.

Q. Now, will you tell me something about your other activities? Do you hold any offices in connection with organizations outside of the College? A. Yes, sir.

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Q. What are they, please? A. Well, I am an advisory editor for the Parents Magazine, which is a magazine with national subscription, probably the leading one in the field.

Q. It is a commercial magazine? A. It is a commercial magazine.

Q. Published and sold on the newsstands? A. Yes, sir.

Q. It has a list of subscribers? A. Yes, sir.

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2680 Q. And caters to parents generally, does it? All right, what else? A. I am on the executive board of the Child Study Association of America, which is one of the older institutions in the field of parent education, and I have retired as a member of the governing board of the National Association of Nursery Education, and several others.

Do you want any more?

Q. I do. A. I am a member of the Parent Educational Committee of our New York Federation of Churches, a member of the advisory committee with Msgr. Moore and Walter Pettit, head of the New York School of Social Work, member of the advisory board to the National Girl Scouts, particularly for the senior girls, the executive committee of the United Parent Association, which is a city-wide organization made up of some 250 school parent associations in Greater New York.

*There are several other things that I don't recall.

Q. What about the national council of Parent Education?

A. That is right. I am co-chairman with Mrs. Gruenberg of the National Council of Parent Education, an organization of professional workers, particularly those connected with various universities and Government departments, who are engaged in some phase of parent education work. It is a strictly professional group.

Q. What about the National Council of Religion and Education? A. The National Council of Religion and Education is a fellowship group, which is made up of some 250 men and women who are teaching, either directly in the field of religion, or what we assume to be related fields in institutions of higher education, primarily liberal arts colleges. It includes about 12 or 15 college presidents, among them Swarthmore, Colby, and George Williams Colleges. It is a group of men and women who have worked together for some 15 years.

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Q. Now, you said that you had conducted summer camps:
 A. That is right.

Q. What kind? A. I was director of the New York City Y. M. C. A. camp for younger boys for three years, and following that initiated and organized and carried on a camp for families under the auspices of the university.

That camp is still being run by the parents themselves after some seven or eight years, but my connection with it has now been severed because of the difficulty of carrying too many things.

Q. When you say "university," you mean Columbia? A. Columbia University is right; the teachers part of Columbia University.

Q. Have you ever had any experience in being called in to advise public officials in connection with obscenity? A. Mr. Oliphant, Assistant United States Attorney in New York, asked me to give an opinion on materials the Post Office Department had objected to, and I did so.

Q. What kind of material was it? A. Largely photographs which supposedly were being used by those who were sending them out as a basis for sex education for children.

Q. They were photographs of nudes, were they? A. That is right.

Q. And they were being sold and sent through the mails on the basis that they would be helpful in sex education?

A. Yes.

Q. What opinion did you give the United States Attorney on that? A. I told him I thought that procedure was not at all justified, that they had very little contribution, if any, to make to sex education, and in my opinion the Post Office Department should bar them from the mails.

Q. Do you know whether thereafter they were banned? A. I don't know. I don't believe it ever came to trial.

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2686 Q. Do you know whether or not they were ever withdrawn? A. I never followed it up. I assume they were from the kind of pictures that they were.

Q. Have you ever given courses on the psychology of family relations and on parent education? A. That is one of my areas.

Q. Today? A. Yes.

Q. In Teachers College? A. Yes, that is right.

Q. Have you at my request examined the material complained of in the eleven 1943 issues of Esquire? A. Yes, I have.

2687 Q. On the basis of your knowledge and experience and particularly your contacts with youths of all ages, are you able to give an opinion as to the likely effect of this material on a normal, average human being? A. Yes.

Mr. Hassell: That is objected to. The same objection as heretofore.

Chairman Myers: Objection overruled.

By Mr. Bromley:

Q. Will you state whether or not the complained-of material is likely to have any harmful or detrimental effect on normal persons in the age groups with which you have been familiar? A. Absolutely not.

Q. In your opinion is there anything lewd, obscene, lascivious, filthy, or indecent in any of the material objected to? A. No.

Q. In your opinion is there anything in this material which would tend to corrupt morals or lower standards of right and wrong as regards the sexual relation, or stimulate sexually impure thoughts or actions? A. No, sir.

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Q. I call your particular attention to the so-called Sultan cartoons which appear in three issues of the eleven, to-wit, February, March, and September. Will you give us the basis of your opinion that there is nothing obscene, filthy, or indecent in these Sultan cartoons? A. Those are the ones in which in some form or another a young woman is associated with either semi-commercial activities or other types?

Q. Yes, that is right, such as one "What am I bid for this 100 pounds of this sugar?" and the Sultan who indulges in the American habit of borrowing from his neighbor, and the one where the soldier boy with the money in his hand is entitled "Sold American." A. I see no objections to these. It seems to me that it is depicting a rather fanciful sort of thing that at one time did occur in the Orient. They are not very realistic but I see nothing obscene about them.

Q. Do you think the publication of these cartoons would tend to stimulate or encourage or create a public sentiment for the institution of harem girls and dealing in women in this country generally? A. It seems rather absurd that anyone could think that.

Q. I would like to particularly call your attention to the article by Gilbert Seldes, "The Fall of the Flattering Word," and paragraphs 4 and 6 of that article which appear on page 68 of the magazine. There is a reference in the sixth paragraph to the "fly front."

Have you read that paragraph and particularly that reference? A. I have.

Q. Do you know what a "fly front" is as related to clothing? A. I believe I do.

Q. What is it? A. As I understand it, a fly front is a method of covering buttons, often used in connection with trousers, but not solely confined to that.

For instance, there are top coats that have definite fly

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fronts. I think commonly I would have to say that that does refer to the type of opening customarily found in men's trousers, but I don't see anything obscene about that rather useful kind of arrangement.

Q. Do you see anything filthy or indecent about the way the term "fly front" is used by Seldes in this article? A. I don't think I have that kind of a mind, sir.

Q. If you strained your mind could you possibly get any filthy or indecent connotation out of it? A. No, not and be sincere.

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Q. And in the same paragraph a reference to the fact that clothes do enhance the sexual attractiveness of women. A. Yes.

Q. Do you find anything indecent or filthy about that paragraph or that reference? A. No.

Q. Could you possibly conjure up anything in that reference that in your opinion would make it filthy or indecent? A. No.

Q. Did you read Gilligan's article entitled "The Court of Lost Ladies"? A. I did.

Q. What is your opinion as to that? A. I happen to remember seeing one or more of the articles that appeared in a New York paper by Mr. Gilligan some years ago,—I don't know just when,—and I remembered my reaction, and I had the same reaction when I read this.

It was a very masterful piece of reporting and gave a kind of realistic picture that, in my opinion, rather than leading to any kind of unfortunate stimulation of perverted imagination, gave a picture of one segment of our social life that is one of our problems.

And I know I talked to one of the judges in New York about this in connection with my work in Harlem and we didn't refer to this specific article, but the discussions of

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the rather pathetic situations that do come up in women's courts makes me think that that question comes up quite often in the courts and as citizens we need to know what the situation is.

I don't think one can be accused of straining in order to make something of it.

I think it is a valuable article, sincerely written, and why anybody would object to that is beyond my comprehension, unless I suppose there are certain words that would be objected to by people whose training and background has been restricted.

But those words are in current use and in no sense obscene except in the minds of people who unfortunately have had poor educational background as far as their own attitudes are concerned.

Q. Do you remember that the Gilligan articles to which you refer were on this same subject matter and appeared as a feature in the New York Sun five years ago? A. I don't remember that. I do remember reading at least one of those articles, but whether it was five or seven years ago doesn't stay with me.

Q. Did you know that Gilligan has also written a book on the subject of night court experiences? A. Yes.

Q. Do you know who Mr. Gilligan is? A. Yes.

Q. Who is he? A. A free-lance writer, I understand.

Q. Of good reputation? A. Of good reputation, and with a very special interest in the Newfoundland fisheries. He has taken a number of trips on Gloucester schooners, and so forth, and I understand from friends of his that that is his burning enthusiasm at the present time.

Q. Did you know that he writes more or less regularly for the Saturday Evening Post? A. I didn't know that. I knew he had an assignment or two from Readers Digest, however, on this fisheries business particularly.

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Q. In the July issue I would like to call your attention to that poem "Dog's Worst Friend," page 141. Do you remember reading that? A. Yes, I do.

Q. Did you get the inference that at the conclusion of the poem it was suggested by the writer that the people who mistreat dogs might well be planted in Central Park and introduced to a lot of dogs? A. That seemed to be fairly obvious, yes.

Q. Do you find anything indecent about a reference such as that in a magazine of general circulation? A. No, sir.

2699

Q. And in connection with the August issue, the color photograph "Mood for Red Hair," which appears at page 73—do you remember that photograph? A. Yes, I remember that particularly.

Q. What is the basis for your opinion with respect to it? A. Do you want my opinion first?

Q. Yes, please, your opinion first. A. I think it is one of the more esthetic, one of the more beautiful color photographs in the magazine, the issues of which I have examined.

2700

Q. Do you think there is anything indecent or obscene about the way the purple drapes have been arranged? It has been suggested that they are arranged so that the reader can mentally, easily, take them off. A. No. Again I think it depends entirely on whether the individual that might be put in that frame of mind has had a limited sort of background, I would say almost a perverted kind of training.

If you are going to strip someone you are going to strip them anyway, mentally. I suppose it might be a little easier than having to unbutton a few clothes.

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If you are going to strip a photograph for sexual satisfaction you are going to do it.

2701

I think the esthetic arrangement there would tend to make that less likely to arouse.

Q. Do you see anything obscene or filthy in that picture?

A. No.

Q. Now, for a moment, will you give me your opinion of the cartoon in the August issue at page 90 where the girl in the wedding gown is shown at the lathe with the subtitle, "Boy, that's patriotism." A. I was particularly interested in that because I felt I must be much more naive and unsophisticated than I supposed.

I have asked a number of friends and also my 14-year-old twin daughters what they got out of that, and it seems to me there must have been some very ingenious kind of thinking that went into the development of the objection to that, Mr. Bromley.

2702

I perhaps am still able to learn something, but I don't quite get it. You can make a very involved assumption as to what that might mean, but it doesn't seem to make some sense. If someone can make something dirty out of that I think they can make something dirty out of almost anything, and that's not hard if you have that kind of a mind.

Q. Do you think the publication of a cartoon like that could possibly have any detrimental or corrupting effect upon any class of our society? A. I can't see it.

2703

Q. In the same issue did you read the story "Offensive on the Home Front," and do you recall the references to the wife's behind and to the husband having slapped a prostitute? A. That is right.

Q. Will you give us the basis of your opinion that that article, and particularly those references, are neither ob-

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2704

scene or indecent? A. I didn't particularly enjoy that article but I see nothing obscene or objectionable about it. Is the word "prostitute" not used in polite society?

Q. You tell us, will you? I only get paid for asking questions. A. I had assumed it was. I perhaps have not been moving in the right circles, but I thought that was a respectable word with a perfectly understandable meaning.

Q. And can be used anywhere? A. And can be used anywhere and, as far as "behind" is concerned, that is merely a statement of locale, isn't it?

2705

Q. It seems to me it may be more than that. It may be a term for that area just like "fanny" might be. A. That is right.

Q. But is either word used in print in a magazine either obscene or indecent? A. It is not as accurate as using the term "buttocks," but as far as my feeling is concerned I don't see how there is anything obscene about it.

Q. In the October issue, at page 37, there is a small black-and-white drawing of a sailor with a dancing girl tattooed on his arm and a live dancing girl looking at it.

A. Yes.

2706

Q. What connotation of decency or indecency did you get out of that cartoon? A. I don't quite know how to answer your question because it doesn't seem to me that is involved.

We do have dancing girls. I suppose it is a rather neat treat for a sailor to be able to use his muscles so that he gives a realistic impression of a girl dancing, but to assume that dancing is obscene is, I think, making a pretty hasty assumption. There is no indication of the way in which that girl is dancing. I suppose she's a hula dancer or a "hoochy-coochy" dancer, or whatever you call it, but I can't see that there is anything obscene about it.

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Q. Well, does it become obscene because an actual hula-hula girl is looking at the demonstration? Does that change your opinion in any way? A. No.

Q. Remember, the second color photograph which occurs in the November issue at page 73, which is entitled "Golden Mould"? What is your opinion with respect to that photograph? A. My opinion with respect to that would be the same as to the other.

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What is the other one called? "Mood in Red"?

Q. "Mood for Red Hair." A. It would be the same sort of thing.

Q. Do you find anything indecent or obscene about this? A. No.

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Q. The "Golden Mould" photograph? A. No. Perhaps I ought to be looking a little more for those things, but I can't for the life of me see it.

Q. Well, it has been suggested that there is a suggestive dark shading down there on the front of this girl where my finger is, which is somewhere below her pelvic region. Do you see anything indecent about the looks of that shading? A. No.

Q. I meant to ask you your opinion of the cartoon which appears in the July issue on page 148, the perfume counter and there being two cartoons, "Burning Desire" and "Baby's Breath." Do you remember that? A. Yes.

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Q. Do you see any possible ground for contending that that is obscene or indecent? A. Well, yes, if you have an obscene or indecent mind, just as I said, that almost anything can be taken in that way. You can make connections with anything, but it seems to me the whole point of that joke, at least as I interpret it, here is a very prissy kind of a floor walker who comes up and who is so cautious about anything, that is the point of the joke. There is

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2710

nothing there that should arouse any obscene or indecent feeling except in a person who is already obscene and indecent.

Q. Now, in your opinion, does the objected-to material collectively or as to any one issue render that issue lewd, lascivious, obscene, filthy, and indecent? A. No.

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Q. Take the objected-to material collectively and in all eleven issues. Do you think the fact that this material is in the eleven issues renders the magazine as a whole—that is the eleven issues of the magazine—either obscene, indecent, lewd, lascivious, or filthy? A. No. Last night as I was thinking a little bit about this I tried to think for myself just what my reaction to the magazine had been over a period of years when I had seen it in the airplanes or railroad trains or doctors' offices, all pretty decent places. I think from our work, from the character that I did, that one could simply say that it is of a sophisticated nature, primarily for adults, but that the cartoons and the pictures are not the essential quality of the thing. They give a certain bite to it, if you will, which, it seems to me, is perfectly legitimate for adults, but the thing that I have been impressed with it is what I can call literary quality. My field is such that I can't offer an expert point of view and say that it has a high literary quality, but from the standpoint of my own case it does have a high literary quality. The kind of articles and the pictures I think is considerably above the average, again within this sophisticated kind of thing.

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Q. Do you have the magazine in your own home? A. No.

Q. Have you shown it to any children? A. Yes.

Q. What has been their response to it, if any? A. They enjoyed it, they appreciate some of the humor. Some of

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the rest of the humor they don't understand. The only think I found ever embarrassing was that it was hard to explain to a child some of the humor, not that I have any objection to explaining it, if they would understand it, but just as it is hard for a child under 12 or 13 years of age to understand the quality of such relationships between mature adults and a marriage, it seems very silly and stupid to them, some of those things, and it is embarrassing, not because of their lack of maturity but it does not give them any stimulation; they don't get it at all.

It seems to me we have gone too far in thinking that everything in the entertainment world or the reading world should be at the level of a six or seven-year-old child. In other areas we don't do that, we don't give them coffee. We don't give coffee to a six or seven-year-old child, but we don't think it is wrong for adults to have coffee. We don't expect adults to go to bed early, and all of those things.

To give you an instance, one of my colleagues in the camp field carried on one of these things pretty far, so far as the councils are concerned, because he didn't believe it was good for the children to have coffee the councillors, as councillors, were not supposed to have coffee; because he didn't believe it was good for the children to smoke the councillors were not allowed to smoke; because it was good for children to go to bed about 8 o'clock the councillors had to go to bed at 8 o'clock. It seems to me that kind of narrow provincialism is something which I think all of us would recognize as having no legitimate basis.

I would not advise it as a children's magazine; I think there are others which are more appropriate, they would enjoy more, but it is not going to hurt any of them.

Q. Based upon your examination of the magazine, is it your opinion that it panders to the prurient taste? A. No.

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Mr. Bromley: That is all.

Chairman Myers: Doctor, do the Sultan cartoons in any wise suggest to your mind the "Arabian Nights"?

The Witness: Yes, somewhat.

Chairman Myers: Referring to the doggerel about the dog, have you ever read James Whitcomb Riley's "The Piddling Pup"?

The Witness: I haven't read "The Piddling Pup," no. I will look that up; it sounds as though it might be good.

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Chairman Myers: We will take a recess for a few minutes.

(There was a short recess taken.)

Chairman Myers: All right.

Cross Examination by Mr. Hassell:

Q. Doctor, would you say the family is the foundation of our society? A. I feel that very strongly, Mr. Hassell.

Q. And that the marriage relation is a sacred one? A. Yes.

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Q. Do you think jokes and cartoons and questionable words which reflect upon the sanctity of marriage and the marital relation are entirely decent and proper? A. That reflects upon the sanctity of marriage and the marriage relationship, did you say?

Q. Yes. A. Probably I can't answer that question in general. I would like to know what specifically; give a specific instance because there are all sorts of things.

Q. Well, having to do with sex. In other words, jokes and cartoons which deal with sexual relations of married

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men and women in a flippant manner. A. Well, I think probably I have somewhat a different point of view than your question implies that you have. I believe that one of the very unfortunate things that has happened in the whole field of sex education is the fact that there has been first of all a kind of conspiracy of silence about it which has aroused in the minds of growing youngsters and youth the fact that there is something nasty-nice about it, and a lot of adults have been particularly affected by it, and if we try to put that attitude of human experiences, which is a very important one, into some special category then we can answer it and get a wholesome attitude, so the answer to your question specifically is that I see no reason why humor should not—in fact, it seems to me humor inevitably comes into the sex relationship as it comes into other types of relationships. There are all kinds of humor and if it is a kind of humor that brings about a perverted reaction, that is one thing, but to say the marital relation and the factors about it are so sacrosanct that no humor can be anything but objectionable, that seems to me to involve an unwholesome kind of attitude.

I don't know whether I made my stand clear on that point, but I feel that very strongly.

Q: Would you put in that category the kind of humor that is reflected in one of the jokes that has been referred to here, where a man is on a Pullman car and he checks his ticket and he finds two luscious blondes in his berth and the joke shows he is a married man and respected in his community, and he tells one of them "One of you will have to leave"? Do you think that that falls in this category such as that you are speaking of. A. Let us see if I recall it. That joke was in the feature which takes jokes from vari-

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ous army papers, the kind of jokes such as that; is that what you mean?

Q. Well, it has been said so. Is that your information from talking to counsel? A. No; they didn't tell me that. I saw it.

Mr. Bromley: He knows it does; of course it does.

The Witness: I was a little bit surprised, as a matter of fact. Perhaps this is off the record, but I expected a little more coaching last night when I got in and I don't think I got very much help from Mr. Harding.

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By Mr. Hassell:

Q. How long did you study it? A. I don't know whether he is earning what he gets or not, but he was very casual about the whole thing.

Q. How long did you study this Esquire business before you testified? A. Studying the Esquire business?

Q. Yes. A. I haven't had time to study Esquire. Do you want the whole story?

Q. Yes, I would like to have it. A. I don't remember whether it was Mr. Harding that came up to see me or not, but anyway it was someone from their office, and I didn't have time to see him. I was just too darn busy to see him.

Q. When was that? A. Unfortunately I have come to rely on my secretaries, and I couldn't tell you. It wasn't more than two or three weeks ago, or perhaps it was three weeks ago?

Mr. Harding: I would guess so. I am not certain.

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The Witness: I am sorry. I hope it is not important. I could find out easily by calling my secretary.

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Mr. Harding: Two or three weeks ago, anyway.

The Witness: Two or three weeks ago, and he said the matter was of great importance, but I unfortunately had some other matters that I thought were of equally great importance, and some time later Mr. Pearle, who is associated with this group, came to see me, bringing one copy, I think it was the January issue, asking me if I had seen the magazine, and what I thought about it, and I told him I would study it, and four or five days later the year's numbers came up, and I asked my secretary if she would have an objection, if she thought she would be contaminated if she went through the articles that were indicated and cut them out so I could see them in one place, and I looked at them on the train coming down once, and I hadn't looked at them again until last night. We just went through them very briefly, indicating a little more clearly the type of objection you had to them.

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So that is the process of preparation unless you include in your questions that I have asked friends, some of these nursery school teachers I have been working with in Boston in the last four or five days, some of the secretaries from college, my boss' secretary, as a matter of fact, a very good Catholic girl who has been raised at home. I asked her about them. I haven't done anything in an organized way, I didn't have time. I would have enjoyed doing it because I would have liked it.

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2728 *By Mr. Hassell:*

Q. So you agreed to come down and testify before you had even gone over this thing? A. Oh, no, sir. I think if you recall what I said that I had looked over what Mr. Pearle brought me before I ever came down, the one issue which I believe was the January issue.

Do you know?

Mr. Harding: That is right.

The Witness: January, 1942.

Mr. Harding: 1943.

The Witness: 1943?

Mr. Harding: That is right.

The Witness: The January, 1943, issue I looked through. I read that before I said I would do anything. He said this was characteristic of the type of objection. I don't know whether you agree that it was characteristic, I believe that it had the—

Mr. Harding: The 12 Vargas.

The Witness: Yes. That is the one that has the calendar of Varga girls, so I don't think it would be quite fair to say that I agreed to come before I looked it over. I had seen Esquire where Mr. Bromley was questioning me about it.

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By Mr. Hassell:

Q. You are not a subscriber to it? A. No, I am a college professor and it costs five bucks a year, and I usually get a chance to see it, but the reason I am not a subscriber doesn't have anything to do with any reason as to its being objectionable.

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Q. You do say the magazine has a reputation of being sophisticated, do you not? A. Well, that is my personal opinion, yes. It is a magazine for adults, I should say. It is not supposed to be a children's magazine.

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Q. Now, you referred to talking to other people or friends and acquaintances of yours? A. Yes.

Q. About this? A. Yes.

Q. Was that after you had seen the January issue? A. Yes.

Q. Did you then go over all these issues? A. No, I didn't take the magazine with me at all. I just asked them whether they had ever seen Esquire, and most of them had.

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Q. And asked them generally what they thought about it? A. I asked them particularly what they thought about the Varga girls, whether they had ever seen them.

Q. Any particular Varga girl picture? A. No. I didn't think it was important. I just mentioned that as part of what little background I had. I wasn't supposed to make—that is a survey or anything like that. I didn't understand that. He wanted my own opinion and not a survey, but I was interested in that personally.

Q. What did they agree to pay you to come down here to testify? A. Well, as a matter of fact there have been no agreements at all.

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Q. You have no understanding at all? A. I have absolutely no understanding at all.

Q. You told them what your daily fee is? A. I have no daily fee. Maybe I am not that expert, I suppose that is one indication of an expert, but I have no daily fee.

Q. The understanding is that they are to pay you a fee and your expenses? A. That is right, but when they asked me what my fee would be I said it didn't make any difference to me. I suppose I probably have been contam-

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2734

inated by the profession I am in and haven't been interested in it. I make a very good salary, I am making more money this year than any other year. I am not interested in the fee thing. I expect to get something, I hope to. I will be rather disappointed if I don't.

Q. Doctor, do you think the word "behind," referring to the portion of the anatomy that is usually sat on, and the word "ass," referring to the same thing, and the words "son-of-a-bitch," are entirely decent words or in common use in polite society? A. Well, I wonder if you wouldn't like to separate those, or do you want to lump them together?

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Q. Well, take up each one of them. A. I would definitely agree that the first one is of a different quality than are the other two. Perhaps it would be less objectionable if you used the French word "derriere." It is more euphonious than "behind," but so far as "ass" is concerned I think all would agree in ordinary groups we don't use that at all, or "son-of-a-bitch" is a term that we don't use. I don't know whether you call it "polite" society, but in describing what you might not call polite society I think it is perfectly legitimate for people to read it. I think it would be inappropriate not to use that term.

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Q. Doctor, you have gauged the matter in Esquire— A. I have what,—gauged?

Q. Yes. Or judged it or weighed it? A. Yes.

Q. In the light of the medium in which it occurs? A. Yes.

Q. That is, it is a sophisticated magazine for men, is it not? A. Yes.

Q. You would be shocked to see these matters that we have been talking about in a magazine like the Saturday Evening Post, would you? A. No, I don't believe so. I think, however, I can't recall any specific instances, that you can undoubtedly find cartoons which are at least as

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suggestive as this one of the bride coming back to the lathe.

Q. I would like to have you point it out because I have been reading the Saturday Evening Post for 40 years, and I never saw anything like that.

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Mr. Bromley: Well, did you look at the ones that are already in evidence?

The Witness: I haven't been prepared by Mr. Harding, or anyone else, to answer that question very specifically, but it is my impression that you could find material in the cartoons that could be interpreted by one who wished to interpret them, or whose professional job it was to interpret material and find dirty meanings. I believe you could find them in the Saturday Evening Post. I suppose it is out of order, but I would like to have someone explain to me more adequately than counsel have been able to do what is dirty about that bride and the lathe, for instance? I was stumped on that.

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By Mr. Hassell:

Q. I understood that you said on direct that you couldn't see the point at all. A. No, I didn't say that. I think if you will refer to the record, I said it seemed to me I couldn't see at all how anyone except the person who could pervert almost anything could find anything objectionable in that. I could make a kind of rational outline of what might be in anyone else's mind, but I can't say that there is any justification for it, or that it could be possible to call it obscene.

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Q. In a magazine of this sort you think it is entirely unreasonable, in a magazine of this sort, for anyone to draw

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2740

the inference that that woman instead of going home and partaking of the joys of the marital relations right after marriage is so patriotic that she goes to the factory with her wedding gown and veil on? A. I think the point that that was obscene—

Q. You don't see that? A. I don't believe that the marital relationship was obscene. If I did I would have stayed a bachelor. I don't believe that to realize and to understand that men and women who are married do have sexual relations—I don't think that is obscene. It seems to me that takes us clear back to a kind of excessive Puritanism that is about as unwholesome as anything can be in the human relationship.

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Q. You think it is perfectly proper and decent to make light of the marital relationship by making a joke out of the fact that a woman goes to a factory directly after getting married with her wedding gown and veil on instead of going home and divesting herself of her clothes and participating in a honeymoon? A. Of course, when I looked at the picture I didn't mentally take her home and undress her and put her to bed, so to me I didn't see anything objectionable.

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It comes back to my original point, Mr. Hassell. I believe there is legitimate humor centered around that phase of human relationship just as there is legitimate humor in regard to other human relations.

But when you set something apart and make it sacrosanct you are not likely to engender the kind of attitudes that you and I have here, because of the training and background we have had. When I say "You and I" I am referring to our generation.

Q. The wedding night has been the subject of a great many ribald jokes over a period of a great many years, has

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it not? A. Yes, and some are humorous and some are not. Some are just nasty.

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Q. And you don't see that this is a joke of that kind? A. I don't think it is nasty at all.

Q. When appearing in a man's magazine, a sophisticated man's magazine that deals to a great extent with sex and sex relationships? A. I wouldn't think that that is a very valid statement that you have just made.

Q. You wouldn't think that? A. No. I think it would be demonstrated not by opinion, but by a careful reading of any of these magazines, that you could hardly say it was primarily dealing with sex or some phase of the sex relationship.

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Q. I didn't say "primarily", Doctor. A. What did you say?

Q. I said it deals with sex matters. A. I thought you used some term which implied that was the general tone, that was the major emphasis in the magazine. I may have misunderstood you and if I did I am sorry.

Each one does have materials which deal with that.

Q. Each issue? A. Oh, yes. I don't think anyone would try to deny it, but I don't think that is objectionable. If this magazine were primarily for the purpose of raising the untoward sex feelings which you speak about, then I think the publishers ought to try to get a new editor because he surely has not made the most of his opportunity if that is his major objective.

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It seems to me that comes in and has been recognized and accepted in a magazine for adults, but it certainly is not the characteristic thing, in my opinion, and I am sure it could be demonstrated in terms of other quantitative figures that that isn't the result.

These are not the words that come first to my mind when I think of Esquire.

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2746

Q. Did you read the story "The Unsinkable Sailor", page 95 of the February issue? A. Yes, I did. I have read all the materials that were objected to.

Q. How many times did you read that story, Doctor? A. I read the whole thing once to get the whole thing in context, which I think is the only fair thing to do, and then I went back and read the parts that were specifically objected to.

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Q. Do you think that story correctly portrays the average run of the boys in the American Merchant Marine today? A. I didn't assume that it was supposed to be an accurate picture of the average run of boys in the Merchant Marine. I didn't think there was any claim made to that.

Q. The title of the story and the text indicates that this sailor has been on board merchant vessels that have been sunk in this war? A. Yes.

Q. And in column one, page 95, down the center of the first page it is stated:

"In Las Palmas he went to work as a sort of contact man for an establishment known as The Black Cat, and the less said about that phase of his life the better." A. Yes.

Q. What would you say that described him as? A. Well, I suppose it is pretty obvious.

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Q. What? A. That when he was ashore he acted as a procurer of sorts. I assume that is what it was.

Q. As a pimp for a bawdy house? Would that be it? A. I would use a little more elegant term, but I expect it means the same thing. I have no objection, if you would like to have me say "a pimp for a bawdy house". It doesn't shock me if you thought it would.

Q. Now, further in the third paragraph of that column he is quoted as having said:

"I grabbed a piece of broken glass and I yelled, 'the first

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sonovabitch that moves I'll cut his head off!" " A. Where is that?

Q. That is the third paragraph, the first column on page 95, the latter part of the paragraph.

"They left the room—but I went to the hospital." A. Yes.

Q. Do you think the use of that term as an epithet and not as a greeting—I believe someone has said that that sometimes is used as a greeting— A. I haven't heard that. Again, I was not prepared well enough. I am beginning to wonder whether Mr. Harding should have—

Q. Would you say that that term as used in this connection or connotation is an entirely decent term? A. Well, if one is attempting to describe with a certain kind of validity the sort of thing that an individual with this background in that sort of a situation would say, then I think they would be very wrong not to use that term.

I have been around some pretty rough customers and I think that is a pretty natural and realistic thing to say.

The kind of writer that would have this man say "Now, any of you gentlemen who attempts to show a belligerent attitude toward me will be subjected to serious damage" would be quite inappropriate.

I think a man in that situation, with this background, would say "son-of-a-bitch" and consequently I think it fits into this kind of an article.

Q. And you think this kind of an article fits into this kind of magazine? A. I think it deals, as some of the others do, with certain phases of human relationship which all of us know exist and which are part of our common American life.

I wouldn't want a steady diet of that any more than I want a steady diet of any other phase but I think for an adult person this kind of thing is perfectly acceptable, just

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2752 as I think the "Court of Lost Ladies" is acceptable, and if I were an editor and in a situation such as this those terms were not used, I would think my writer probably wasn't good enough to publish.

I am not an editor, of course.

Q. In view of the seriousness of the present war we are in and the necessity for a merchant marine, do you think this type of story adds to the war effort? A. I don't see what it has to do with the war effort. I don't know what you are implying, Mr. Hassell. I am a little slow sometimes.

Q. You don't think it might discourage some decent boy who had planned or thought of going into the Merchant Marine in order to get munitions and so forth across the seas— A. Might discourage him from going in because they would have too rough customers or something of the sort?

Q. Yes. A. I think that is stretching things pretty much.

Q. Do you recall the balance of this story? A. I don't recall it very clearly. Perhaps you had better remind me of the parts you are interested in:

Q. In the next column on page 95. A. In column two?

Q. Yes, down below the boxed-in material. A. Yes, I see it.

Q. There is recited the meanderings of the so-called Unsinkable Sailor. A. Yes, sir.

Q. How he gets a jar and apparently puts a sample of urine in it— A. I assumed that is what he was talking about.

Q. And he takes it to this place and gets the manager to put it in his safe and so forth, and then gets a suite of rooms and a bottle of whiskey and has himself a good time— A. With the whiskey—

Q. Yes, with the whiskey. A. I thought maybe I may have missed something else.

Q. And then beginning at the bottom of the third column:

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"There is a new secretary in the union hall who isn't used to sailors or their language. It seems Showboat went up to her when she was alone in her office, bent over her shoulder—loop-legged drunk—and rasped, in his peculiarly hoarse and penetrating voice, 'How's chances to lower the boom on you, sister?' The girl jumped up in terror and ran screaming from the room. 'Oh, that man! That man!', she cried. 'Help! He wants to do something terrible to me!'"

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Do you say that that portion of this article has no indecent or lewd connotation, Doctor? A. My understanding is, though I am not much of a sailor—I have done some—that this phrase "lower the boom" does not have any indecent implications.

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"I suppose I can probably figure up some. As a matter of fact, I didn't when I read it the first time, and here I think a little plug for Mr. Harding should come in. It was he who pointed out what you felt that might mean, and I can see how if one were looking for a dirty meaning there that that could be used, but I had not honestly seen it. Again, that is a phase of my unsophistication."

Q. Let's be perfectly frank about this thing, Doctor. Don't you gather from the language that follows this phrase: "How's chances to lower the boom on you, sister?" that this had a rather startling effect on the girl to whom it was spoken? A. Well, apparently it had a startling effect. A good many things have startling effects on unsophisticated women—mice and so forth.

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Q. But she said: "Oh, that man! That man. Help! He wants to do something terrible to me." A. Yes.

Q. Do you say that the meaning sought to be conveyed by that is obscure to you? A. I said, and perfectly honestly, that when I read it the first time and until it was brought to my attention, I didn't make that connection.

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Q. You did not? A. I did not. That may be an admission of weakness on my part, but it is true.

Q. You had heard the use of this expression, "Lower the boom on you", before? A. That is right, in sailing circles.

Q. That is right. And you gauged the meaning of that by your prior knowledge of it outside of the story? A. Yes.

Mr. Bromley: It spells out the meaning in that very paragraph, doesn't it, Mr. Hassell? You never refer to that.

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Mr. Witness: If I had not had the understanding before, it says very directly that what it means is a touch.

By Mr. Hassell:

Q. Yes, that is plain, but the first part of this is also plain, isn't it? A. You mean the girl screaming and saying what the terrible man is going to do to her is plain?

Q. Yes, he is going to do something terrible to her. A. Apparently she misunderstood the situation, yes.

Q. On page 10 of the March issue there is what purports to be a letter signed with an initial and "Somewhere, Indiana." This is emanating from a high school teacher.

2760

He refers to the Varga pictures as "Varga-vistas of forbidden fruit."

Do you think he has a perverted idea of what the Varga girls are calculated to portray? A. No, my interpretation of all of these letters is that there are people who like to see themselves in print and who try in writing their letters to write something with a certain tang to it so it will be printed, but I don't see anything particularly objectionable or obscene about it.

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Q. Why do you think the editor of this magazine picks this out to publish out of probably thousands, or at least hundreds of letters? A. I have not consulted the editor, so I have no direct data on which to base a judgment. I would say that out of the many thousands of letters he undoubtedly gets, he would pick letters that tended to have a certain tang to them, if you want to use the word, not obscenity at all, so far as my opinion is concerned—that would make interesting reading for sophisticated adults.

He may have some other motivation. I have not had the pleasure of getting acquainted with the editor except in a very superficial way.

Q. Do you think they are published in order to let other readers, the public generally, understand what the reputation of Esquire really is? A. I don't know. It is sold and this is a pretty good letter because the main part of the letter, beside the introductory thing, as I get it, is this man's interpretation of the high quality of the literature in Esquire.

Q. He takes objection, does he not, to the cover pages?
A. Apparently.

Q. Do you take any objection to the cover pages or the front covers of Esquire? A. No, not especially. I have seen other covers that I enjoy more, but I have no objection to them.

Q. You don't think they have any improper sexual connotation? A. They don't to me, but as I said before, I know enough about people to know that there are some people to whom almost anything can have an improper sexual connotation.

Q. The writer of this letter here points those out and says the only way in which he could avoid taking these covers in "without disturbing small town codes of conduct, would

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be to somehow camouflage that bulge-eyed masher on the front of each issue."

Do you think of the figure Esky, which represents Esquire, as a bulge-eyed masher? Did you ever think of that?

A. No, I thought he was a rather silly figure, but I have not been able to see how he would have much sex appeal for any woman that I have ever known.

I didn't mean that personally, because I have known them.

Q. I see. Now, turn to page 134 of the June issue, please, Doctor. Did you read those items in the lower part of that page? A. The number two by Roscoe Fleming?

Q. The libel suits. A. Yes, I read that.

Q. The first item: "Two weddings are on dit for next week. This weather kind of suggests two in a bed, spoon fashion."

Do you think that is an indecent reference to the marital relation? A. An indecent reference?

Q. Yes. A. I think it is a definite reference to the marital relationship and I think no one needs to play a dewy-eyed innocence. I think that it indicates that in the rough language of that particular time in the frontier town, the suggestion is that is one good way to keep warm. I think it is characteristic and fitting for the kind of publication it is describing.

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Q. Do you think it is characteristic and fitting for the kind of publication in which it occurs here, Esquire? A. I think that would go back to some of the other things I said before, yes. I think in a magazine that attempts to do the job that Esquire does, that is one point.

I don't see anything especially objectionable. It does not encourage, in my opinion, or facilitate the development of that kind of language in our modern times. It is a historical kind of a document which I believe a mature adult has a perfect right to read about, and to understand the

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part of our whole developing culture, that there was some very rough stuff.

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You can find books in any library describing accurately similar kinds of things on any historical basis.

Q. How about this type of material for children, young adolescents or post-adolescents? A. Some of them wouldn't understand it and those who did probably would have had the kind of interpretation and understanding and guiding from their parents so that they would see it just as any mature adult would see it, which I would hope would be in its context and so forth.

As I understand obscene things, they are the sort of things that would be likely to develop or raise in the minds of people attitudes or ideas that would lead to overt action or the development of one particular phase of human experience.

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Maybe my interpretation of "obscene" is not accurate and does not fit your interpretation.

Q. Do you think this kind of an article is perfectly proper literature for circulation in a magazine of general circulation, available to children as well as to adults, on any newsstand? A. I would have to answer "Yes" to be consistent with my expressed point of view about the fact that I don't believe any magazine or any material should be written down purely to the level of children, and I don't believe children will be affected by that.

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In fact, they won't understand it.

Q. Do you think they would have any trouble understanding the next item, page 134 in that issue. A. That who would have any trouble understanding it, children or I?

Q. Children. A. You mean the little epitaph or verse?

Q. Yes. A. I think it is perfectly clear what is being said.

Q. You don't think anybody could read it and have any trouble understanding that? A. I couldn't say that. First

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grade children can read, but I don't think they can understand that. Sixth grade children can usually read, and I don't think they would be able to understand it.

Q. Certainly, if they didn't know what the word "virginity" means they wouldn't understand it, Doctor. But do you think there is anything ambiguous in that doggerel or whatever you want to call it? A. I don't believe so.

Q. And do you think that is perfectly proper literature for general circulation? A. You see, Mr. Hassell, it all depends on what your point of view is, of what is proper.

Q. You have stated that before. Would you say yes or no to that in view of your former statements? A. I would say it is perfectly acceptable in an article that describes accurately what the attitudes and the *mores* and the customs were at a particular time in a particular section of the country.

They are brought in as examples of the times existing then. Otherwise, it would not have any validity.

I wouldn't say that this encourages the development of that kind of language in a society that does not feel it is particularly appropriate or acceptable.

Q. I see. A. It is the same kind of thing where you have a sports writer quoting a baseball manager or baseball player on something related to a big league game, where the possibilities of a successful outcome are discussed. He uses words of that kind instead of reporting what the person probably said, which might not be profane or anything of the sort, but which would have much more of a colloquial flavor.

I think that is poor reporting when the writer reinterprets and puts in fine flowing phrases. When he says what the man says, leaving out any profanity, and puts in colloquial terms, it is much more accurate and realistic reporting.

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Q. Refer, please, to page 87 of the July issue of Esquire.

A. Yes.

Q. The exploits of Esky. A. Yes.

Q. Do you understand Esky to be the symbolic character representing Esquire? A. Yes.

Q. The cartoons numbered 55 and 56. A. Yes.

Q. Picturing the mermaids and Esky with a handful of bills, and the man in sailor costume standing behind him, to whom he apparently is talking—this man named Verne.

That says in the text under 55 beginning just beyond the center of that:

"Immediately the surrounding water was filled with mermaids. 'You see—women are women the world over.' Esky turned to Verne: 'Say, there's something I've always wondered about mermaids—'. 'I wouldn't know', replied Verne."

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Then, note the mermaid picture in cartoon 56 and Esky with the bills in his hand.

Do you think the meaning of that has any indecent connotation in connection with this character Esky? A. I expect it could have an indecent connotation, yes, if one wished to make one. I don't think it is very amusing, personally. I don't think this whole Esky series is very amusing, but that is not the question you asked.

Q. I don't think there would be any controversy on that between us. But you think this would not have any indecent connotation? A. What do you mean by "connotation": Mr. Hassell?

Q. That this does not imply something indecent. A. I think it could be interpreted, just as many other things could be interpreted to be indecent, yes. I think it easily could be interpreted that way, yes.

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Q. In a magazine of this sort, read by men, and designed for men, a sophisticated magazine, dealing with such jokes

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2776 and cartoons as have been referred to here, you would say that that would be a natural interpretation of this cartoon? A. It would certainly be one very common interpretation, yes.

Q. I see. A. But I don't know that that would affect the sanctity of the home very much. It is rather fantastic.

Q. Now, refer to the August issue, page 10, the Sound and the Fury, which is the letters from readers page. A. Yes.

Q. There is in this first column, the center of the column, under the heading "Considered Opinion", the following:

"In your May issue (this year, too!), page 93, the article entitled Broadway for the Boys (italicized). It is said '20 per cent don't (italicized), 20 per cent do (italicized), and 60 per cent might (italicized).' While in no way representing the opinion of the Navy Department, it is the considered opinion of this patrol squadron that 20 per cent don't (italicized), 20 per cent do (italicized), and 60 per cent don't get the opportunity (italicized)."

"Now, you guess which category we fall in."

Doctor, what do you think that has reference to? A. Well, having read the Broadway for the Boys article—where was that—in May?

2778 Q. Yes, the May issue, 1943, page 93. A. I assume that it refers to the kind of thing that apparently has been discussed in this hygiene class as portrayed in the play, and when I remember my college days, the discussion in those hygiene classes—I think it was very ineptly done—but a part of the discussion was definitely related to the undesirability of sex relationships before marriage from the standpoint of the possibility of contracting venereal diseases.

I think that some such discussion is now disseminated as a part of the whole picture with soldiers.

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Q. Do you think, Doctor, it is entirely desirable to divide the Army—no, it is the Navy—on the basis it is attempted to be divided here, 20 per cent do, 20 per cent don't, and 60 per cent might, because they don't get the opportunity? A. Well, I don't know how one could determine the validity of these statistics. I think almost any of us would recognize that at the present time there are a good many individuals in the Navy who probably are not virgins, and who have had sex relationships, and it is dealing with a factual situation, I suppose. But I can't say anything about the validity of these statistics.

Q. I wasn't asking you that. A. You were asking if it was proper to discuss it?

Q. I was asking whether you think it is a perfectly proper subject of a discussion in a magazine which is not a scientific magazine—it isn't a scientific magazine, is it? A. No, it is not.

Q. In a sophisticated man's magazine. A. I would think that in a sophisticated man's magazine it is perfectly proper to recognize the fact that men in the armed forces, as well as out of the armed forces, do have illicit sex relationships. It doesn't set standards. I don't see how those dry figures would encourage anyone who otherwise was not ready—who was not looking for sex experience—I can't see how that would encourage or in any way motivate, but that is a matter of opinion, again. It is an honest one, however.

Q. Refer to the picture at page 89 in this August issue, Doctor, please. A. Yes.

Q. This is the paste-your-face-here picture. A. Yes. It is one of the series of what—two or three others.

Q. Who told you that? A. I looked through the magazines. I had all the magazines.

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Q. What has this got to do with any other picture? A. It is the same kind of method that is being used, of putting a picture of one's face into a situation, as far as I can see, to boast or show off before friends in what obviously is a situation that one can boast about.

Q. Do you think the fact that this is one of a series of pictures in which men are supposed to paste their faces or pictures of their faces, affects the character as far as decency is concerned, of this picture? A. No, I don't believe it makes any difference.

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I would be perfectly willing to give my opinion on this picture by itself without reference to the others.

Q. But you did consider it in connection with the others, did you not? A. I saw the others, yes, as I read through the magazine. The others, as I remember, were not specified and I only remember one of the others—I am not sure there were three—but I remember one of the others in which there were a couple of girls on a bench. I am not clear about it.

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Q. You didn't have in mind that you wanted to bring in here arguments on behalf of the decency of this picture by referring to the others? A. No, not particularly. It was a type of picture which was rather different than any other pictures that appeared because it suggests that they be used for the type of purpose for which they appear, and I have already given my understanding.

Q. Do you think it is entirely proper and desirable among young people to encourage postures and attitudes of this sort, a young woman astride the shoulders of a young man? A. It is a very common thing to see at any of the beach resorts and it depends entirely upon the attitudes of the individuals involved as to whether it is improper or indecent, in my opinion.

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Q. In this instance, if a young man reader of this magazine would have his picture taken in exactly that size, the face, and should paste it there and put it up, do you think that would be without any indecent connotation at all? A. For me it would be without any indecent or obscene connotation. I can point out many situations in which things that you and I would not consider indecent by other people are considered indecent, depending on their whole attitude and background and whether they had a different attitude about some of these things because of unconsidered and unwise attitudes in their own homes.

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Q. Why would you think such a young man would want to go to the trouble of having his picture, a picture of his face exactly the same size as that blanked out white space, made and go to the trouble of pasting this thing here? Why would you think he would want to do that? A. I wouldn't read into his motives anything obscene. I think we have other evidences of a similar kind of thing. You go to Coney Island or some other place and fit yourself into a cowboy costume and have your picture taken that way. Of course, if you wish to read something obscene in it is perfectly possible, just as it is possible to read into it a good many other things.

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Q. In this instance it is a photograph of a young lady.
A. Yes.

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Q. And she is pictured there in colors? A. Yes.

Q. And she would be a stranger to probably most of the 700,000 men or people who get this magazine and buy it?

A. Yes.

Q. Why should anybody or any young man want to paste his face in a place of that sort and have her seated on his shoulders in that way; an utterly strange woman? A. Well, for the same reason that many of our photographers as I

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2788 understand it, around places where there is a big concentration of military forces, have young women there, not for any immoral purposes, but to have a soldier or a sailor have his picture taken with her. I suppose it is one of the foibles of human nature which just want to impress somebody with how able he is to develop a friendship with a good-looking woman of the opposite sex. I don't think that is misjudging things; I think it is a fair interpretation.

Now, if you want to build up a dirty picture you could do it, or anyone can do it if it was necessary.

2789 Q. Now, if this picture that is shown here were instead the picture of a well-known movie actress would you think that would have a different bearing on it? A. No, I don't see what you have in mind.

Q. Are you a close observer, Doctor, that is, as to reading do you think of things quickly? In this instance the legend there on the blanked out spaces says "Paste your face, face here", doesn't it? A. Yes.

Q. It doesn't say paste your picture here? A. No.

Q. Didn't that occur to you before? A. No. I have been fortunate enough not to be impelled by my background and experience to find dirty meanings in everything I read. Not that I am not human enough to see the possibility at times, but I don't go around looking for it. I don't think most people do.

Mr. Hassell: Could we adjourn here?

Chairman Myers: Yes. We will adjourn until one-thirty.

(Whereupon, at 12:00 o'clock noon, the hearing was adjourned until 1:30 o'clock p. m.)

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AFTERNOON SESSION

2791

(The hearing was resumed, pursuant to the adjournment, at 1:30 o'clock p. m.)

Chairman Myers: All right, we will resume.

ERNEST OSBORNE resumed the stand and testified further, as follows:

Cross Examination by Mr. Hassell (Continued).

2792

Q. Doctor, will you refer to page 105 of the August issue of Esquire? A. August?

Q. Yes.

Do you think that cartoon in the lower right hand corner has any objectionable sexual connotations? A. Did you add the adjective "objectionable"? You did, didn't you?

Q. Yes. A. No.

Q. Will you look at page 65 of the September issue, sir? Do you think that full-page cartoon in colors was designed to portray an off-color joke? A. I think it is in rather poor taste. I wouldn't call it obscene.

Q. Now, look at the Varga girl picture on page 38. A. The same issue?

Q. Yes. A. Yes.

Q. Do you think this young lady is attired so as to conform to all the conventions? A. What conventions?

Q. Of decency? A. You mean for street apparel or home living or stage or what? There are differences, aren't there?

Q. I mean as to having in mind the displaying of this picture. A. I don't quite understand your question.

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Q. Strike out what I said before.

Would you say that to all intents and purposes this young lady is totally and entirely nude except for her shoes? A. No, she has on some rather revealing lingerie; no one could deny that.

Q. It doesn't conceal any part of her, as a matter of fact, does it? A. The costume?

Q. Yes. A. Not the costume, apparently.

Q. Now, look at the Varga girl picture at page 43-44 of the September issue? A. September, '43?

Q. October. I beg your pardon. Isn't that young lady's costume quite revealing? A. Yes, it looks to be the kind of lingerie that I understand—she is obviously not fully dressed.

Q. And the costume you see on the upper portion of her body is apparently transparent, isn't it? A. It is all one costume. There is no differentiation between the two parts, is there?

Q. I see it is all one costume except possibly for her stockings since her legs are not tinted the same color as her arms and chest. A. Yes.

The question you asked me was what?

Q. It is quite transparent? A. Yes, obviously.

Q. Now, Doctor, you defined, I believe, an obscene picture as a picture such as the French picture post cards. A. I made no comment.

Q. You didn't? A. It must be another witness.

Q. Can you tell us or indicate to us just where decency ends and indecency begins in connection with pictures? A. No, because that, I think, is a personal matter and you can't draw a nice line; at least I have never seen it done—by anyone—that could support the position he took. If you are asking whether there is a specific line by which you can

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set up certain criteria, I don't believe that is possible. Mr. Hassell.

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Perhaps I didn't understand your question.

Q. I think so.

Would you say that nude photographs of men and women, are decent for general distribution? A. That nude photographs of men and women—are you lumping them together in the same picture?

Q. Either way—separately first. A. I wouldn't say that it is necessarily indecent any more than I think some of the pictures in the Metropolitan Museum are indecent because they have no clothes.

My answer is that nudity in and of itself is not indecent.

2798.

Q. Do you accept the philosophy of the nudists that the commingling of the sexes in the nude? A. Do I accept that philosophy?

Q. Yes. A. No. If I understand the philosophy—I am not sure I do—it seems to me it would be a very uncomfortable kind of procedure.

Q. Can you draw the line between decency and indecency in jokes relating to sex? A. For myself, yes. I wouldn't attempt to draw it for you or for another person. Again, I think that is a relative matter and it depends to a considerable extent on whether there is humor.

There are so-called jokes that are without humor whose obvious purpose is to gloat over certain attitudes and ideas that some people who, for my point of view, have a perverted point of view, have.

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Q. The opinions you have expressed here are your own opinions? A. Yes, sir; as much as any man's opinions are his own opinions. They are formed from my reading and contacts with other people, and out of my personal backgrounds which have been fairly respectable.

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Q. You don't contend that the opinions you have expressed here with respect to these matters represent the general opinion of the American public, do you? A. I don't see how anyone can pretend to speak for the general public of America. I think you can indicate that certain sectors of American life have certain ideas, but I would be rather brash to indicate I can speak for the general public.

Q. Doctor, as a general rule, do pupils confide in their teachers as to things which impel them to commit so-called secret vices? A. I don't get the question, I am afraid.

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Q. Is it a common and ordinary and usual thing for a pupil at the age of puberty, or a young man in the period after puberty, to confide in his college professor or his high school teacher or his grammar school teacher as to the effect that things of this sort have on him, or her, in a sexual way? A. No, I think unfortunately not. The American teachers today have not built, for a variety of reasons into which I would be glad to go if deemed necessary or valuable to you—have not built up the kind of consulting relationship with the young people that they work with that is devoutly to be desired.

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They don't confide in teachers because they show so little understanding in their attitudes and relationships. I am looking forward to the time when the attitude will be in the affirmative, as it is in some instances. In the good teachers that is so.

Q. The "Dog's Worst Friend," the verse or doggerel—
A. Yes.

Q. In the April issue of Esquire, page 141, can that be properly characterized as coarse writing? A. Coarse writing?

Q. Yes. A. Not for me. I think it has an element of humor in it. It is not very pleasant, but it is one other illustration of making the punishment fit the crime in a rather direct kind of way.

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Q. Would you say that verse, or whatever it may be called, could be characterized— A. Doggerel may be? 2803

Q. As filthy? A. As filthy?

Q. Yes. A. No, I don't believe that it is filthy.

Q. You recall "The Savage Beast In Us," at page 32 of the May, Esquire? A. Is that Paul Gallico?

Q. It has to do with burlesque. A. Oh, yes, that is Paul Gallico.

Q. And the illustrations throughout the article? A. Yes, I remember it.

Q. Would you say that the illustrations in this article could properly be characterized as disgusting. A. Disgusting? 2804

Q. Yes. A. I don't think the women are particularly good looking, if that is what you mean. They are not disgusting. The feeling I got was that of sympathy. I don't think they are disgusting. I don't see that they are drawn clearly enough or definitely enough to be disgusting. I don't think they are very good looking women, from my point of view. Now, others may have a different opinion.

Q. Would you think they are disgusting when taken in connection with the textual matter and the article describing in some detail what the bump is, and the other movements of burlesque and strip tease? A. No, I say that article and one other that is cited is not disgusting; the Court of Lost Ladies is a type or an example of the thing I discussed this morning. That it is a pretty factual kind of description. I imagine there are a good many people who would think I am being captious, but I am not at all. It has a certain moral tone to me; it doesn't excite me. After reading that article I didn't get excited enough to go to a burlesque show as would a low or moronic type of person that is sexually titillated. 2805

Q. After reading that article did you have such thoughts

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as you did before reading it? A. No, I had somewhat the same opinion. It just substantiated my opinion and it was done very effectively by Mr. Gallico, I thought.

Q. As a matter of fact, it didn't change your opinion at all, did it, Doctor? A. It confirmed it, it didn't change it. I am fairly mature in years and I have established certain opinions which are open to modification, but being in the field I am if I hadn't come to some opinion on the place of burlesque in American life I would be derelict.

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Q. Do you think it would change the opinion of any so-called burlesque fan, or reader, after seeing this article in Esquire? A. I think it is quite possible, yes. I think it gives a certain perspective to the thing. Again I am speaking hypothetically. I haven't inquired or asked anybody whom I knew was a burlesque fan whether it acted as a dose of cold water on them; but it seems to me it would have that effect; it doesn't seem to me to be exciting or interesting.

Q. Do you recall the story or article "Home Sweet Ruby Street" on page 77 of the February issue? A. Yes.

Q. Dealing with Harlem? A. Yes.

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Q. Would you agree that that story is sordid and in bad taste? A. That depends upon your point of view again, Mr. Hassell. I am a member of a local selective service board which has a good many Negroes,—about half of our registrants are Negro registrants, and I am working with a social service group in Harlem.

I am sure that what is described there is not described as being desirable, but I think it is a fairly accurate picture of some of the relationships that exist in Harlem. It has an economic and sociological background entirely. I can't help but feel that that story was not written to develop anything like a feeling for an undesirable thing; no, I think it is a sociological article and pretty well done,—fictional, of course.

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Q. You have in mind the cartoon on the second page of that article, or story? A. The illustrations?

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Q. Yes. A. Yes.

Q. Showing Mrs. Finn, the supposed-to-be social worker, seated in the room at the time the young colored people or man and woman get out of bed and dress in front of her? A. They have gone through that part of that already, as far as the picture is concerned; they are not unclad.

Q. They are in the process of dressing, aren't they? A. Yes.

Q. There is a reference to Radiant, the young Negro man or character in the process of dressing, giving a slow wink to Mrs. Finn as he catches her wandering eye? A. Yes.

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Q. You say you think that is the usual customary scene in Negro homes in Harlem? A. Well, I wouldn't have been present in enough to make a generalization of that sort, no, but I think it is quite in character with many individuals that you find in such a group.

Q. Would you characterize this article, or story, as uplifting? A. No, not particularly. I don't assume that the editor is entirely in the business of being a moral uplifter.

Q. You don't understand that to be the function of this magazine, do you? A. I wouldn't say it was the primary function. As I have already pointed out, I think in some instances,—I don't know whether constantly or not,—it has been done with that purpose, but I wouldn't think it was or would be the primary objective that Mr. Gingrich would have. I haven't discussed his philosophy with him.

2811

Q. Doctor, you referred previously to having conferred with a United States District Attorney in New York. A. That is right.

Q. With respect to some pictures. A. That is right.

Q. Of nudes? A. That is right.

Q. Do you recall the name of the defendant or the individual involved? A. No, I don't.

Ernest Osborne—for Respondent—Cross.

2812 Q. Can you otherwise identify the case? A. No. The only thing I remember is that this man had advertised, as I suppose many of them do, in certain publications saying that there would be sent by mail pictures that would be helpful in the field of sex education, but I don't know whether I could be sure if his name was mentioned. That was some four or five years ago.

John Cahill was the attorney. I remember the pictures fairly well. I also read a book of the kind that dealt with certain forms of female perversion and was asked to give an opinion on that, which I was willing to do.

2813 Q. Have you ever appeared and testified in any court, federal, local, or state, as an expert on obscenity? A. No, not as an expert on obscenity.

Q. Have you ever appeared and testified in any court, federal, state, or local, as an expert on obscenity? A. As an expert on obscenity?

Q. Yes. A. I don't know as I have ever been characterized as that. I have testified on one other occasion, some years ago, in a suit brought in Bronx County by the District Attorney, on a picture, stills from the moving picture "Birth of a Baby." That is the only other occasion.

2814 Q. Was a question involved in that case as to whether the pictures were scientific or artistic or what? A. The point the prosecution was trying to make was that they were obscene, as I remember it, and I don't believe that there was any question raised as to their scientific validity—at least not when I was cross-examined.

Q. Did you testify for the defense or for the prosecution? A. For the defense in that instance, with a completely good conscience, and without fee.

Mr. Hassell: I see. That is all.

*Ernest Osborne—for Respondent—Redirect.**Redirect Examination by Mr. Bromley:*

2815

Q. Even though Esquire is designed for adults, you find nothing in the magazine which in your opinion would morally hurt or be detrimental to any class of persons in any age group in this country? A. No, I couldn't answer that in the affirmative because you didn't include the phrase "any normal person," which I think must be included because there are individuals whose whole background has been so warped that it takes very little to set them off.

A fully clothed woman can be an exciting thing to them, but so far as what we would roughly call a normal individual, I would answer in the affirmative.

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Q. You say you would answer in the affirmative? A. I am sorry. How did you ask the question?

Q. It ended up with, "You would not find anything in the magazine which would morally hurt—" A. No. It should be answered that way. I am sorry.

Q. Coming to the "Esky" picture strip in the July issue—A. That is the one with the mermaids?

Q. That is the one with the mermaids. Does the fact that the textual material contains the question, "I have often wondered about mermaids," and the answer, "I wouldn't know," in your opinion render the strip, or any part of it, obscene or indecent? A. I think not, no. It could be interpreted obviously by a person who wished to interpret it, or whose job it was to look for dirty meanings—it could be interpreted that way, but I see nothing objectionable about it.

2817

Q. Do you think of any worse interpretation than that the question was intended to mean he wondered how mermaids had babies or how they had intercourse? A. That would be the worst interpretation, in my opinion.

Ernest Osborne—for Respondent—Redirect.

2818

Q. The fact that that interpretation could be placed upon those sentences by a reader would not render the reference indecent or obscene, in your opinion, would it? A. Not as far as my standards of decency are concerned.

Q. Referring to the August issue, the "Paste-Your-Face Here" cartoon, do you think that the inference which I understood counsel to draw when he emphasized the word "face" in "Paste-Your-Face Here" is to any extent negatived by the textual reference contained on the opposite page in which it is stated in the second column "To be a Don Juan for a day you need only to paste your own likeness in the indicated blank space." A. It seems to me that that kind of a statement would make it a little more difficult for a dirty-minded individual to think that the only reason for the picture is to get some perverted meaning from it.

2819

Is that your question?

Q. That is right.

Do you think any normal person would ever come to the conclusion that what was intended was cut out the picture of his face and paste it face down on the picture?

A. That is a little hard for me to conceive. I have a different attitude towards human nature than that.

2820

Q. Do you think that the textual reference further down on page 88 to the effect: "What you eventually decide to do with the seascape is your own problem. If you go in for whimsy you might air mail it to your family and tell them you are engaged"—do you think that to some extent negatives any possible dirty implication from the legend on the picture? A. Yes, I think that is a reasonable supposition.

Q. You would not consider it to be an unreasonable or exaggerated interpretation for the publisher of this picture to think that service men might like, as a joke, to paste

Ernest Osborne—for Respondent—Recross.

their pictures here and send it to their families and say "Look at the gal I became engaged to"? A. That is the point I tried to make this morning, only a little different approach.

Q. Did you read in the October number the article "Wise Men Pick Pyknic girls"? A. Yes, I did.

Q. What is your opinion of that article? A. From the standpoint of its scientific validity or its tendency to arouse indecent, obscene, lewd, or lascivious thoughts?

Q. The latter standpoint. A. The latter?

Q. Yes. A. I didn't see how it could possibly do that.

Mr. Bromley: That is all.

2821

Recross Examination by Mr. Hassell:

Q. Doctor, will you define this normal individual we have been talking about? A. Normal individual?

Q. Yes. A. Again, Mr. Hassell, I think that is a somewhat difficult explanation to give, but I think most of us would agree that while there is a considerable range of normality, the individual who can meet life's experiences of all kinds, psychological, social, and personal, and adjust to them and live with them in such a way as to maintain a fairly objective happy kind of life, who does not have to concentrate so extremely on one phase or another that he becomes off-balance, would be a definition of normality. It would have some proximation or reaching toward it.

I realize that isn't very precise, but I would be glad if you want to question me in detail.

Q. What age would this normal individual be? A. I think that would be true from the first year of life right through, a developmental thing. I think there are some

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Ernest Osborne—for Respondent—Recross.

2824 two-year-olds whose family attitudes have perhaps some other environmental factors who have begun to develop the beginnings of abnormality, but I don't think you can give one description for all age groups.

Q. Do you think the same thing that would excite an 18 or 20-year old would be calculated to excite a mature man 50 or 60? A. No, I would assume that as one lives through his life he would develop somewhat different attitudes and different points of view.

One that might take us back to this business of normality—it seems to me one can accurately say that an individual who carries over into his mature middle life some of the same immature, infantile attitudes that he has gotten out of his experiences, might be called somewhat abnormal. I know a number of mature persons who are still rather infantile in their attitudes toward many things, not only in this thing but in others.

I think there is a broadening of perspective—I don't want to sound too much as though I'm in the class room—

Q. Is there a difference with respect to these normal individuals, growing out of the sex of the individual? A. Would you make that more explicit, please? I don't quite get the implication.

2826 Q. Is there a difference between the male and the female sex— A. I think there are certain obvious differences.

Q. As to how they are affected by matter such as that we have been talking about? A. I think there probably is. Mr. Hassell. Males and females are really subjected to different experiences in a variety of ways and that is a long story.

Girls are supposed to be nicer, more restrained, and so forth, more modest or more neat, less aggressive. We set up some very artificial expectations and some natural ones.

Ernest Osborne—for Respondent—Recross.

I think there is a difference in masculine and feminine psychology.

2827

Q. Yes. What might be indecent or filthy to a female might not to a male of the same age? A. That is right except that I wouldn't make so much a point of the sex differences as of the individual differences, that is, between person and person rather than between men and women.

But I think there are certain basic background experiences that tend to take women on the average—which is a very loose way of saying the thing—to a different attitude.

But that is a theoretical differentiation. There are so many differences between individuals, whatever their sex, that that is the important thing.

2828

Q. Can you divide the population on the basis of normality, say 95 percent are normal and 5 percent are abnormal, or something of that sort, or vice versa? A. I would hesitate to make any generalization in terms of a numerical statement. I would say the great majority are normal.

Q. You wouldn't undertake to divide the 700,000 readers of Esquire on that basis either, would you? A. I would have no statistical data at all. My only answer to that question would be based on the kind of people that I know who read it, the kinds of places in which it is found.

Again, that is from a very-limited personal experience. I don't know what the statistical data is which I am sure the magazine has or has collected for purposes of this hearing.

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Mr. Hassell: That is all.

Mr. Bromley: That is all.

(Witness excused.)

Lee Hastings Bristol—for Respondent—Direct.

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Chairman Myers: Call your next witness.
Mr. Bromley: Mr. Bristol.

Whereupon,

LEE HASTINGS BRISTOL, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

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Q. Will you give us your full name, please, sir? A. Lee Hastings Bristol.

Q. And you reside where? A. Westfield, New Jersey.

Q. What is your business, Mr. Bristol? A. Manufacturer, Bristol-Myers Company.

Q. And what kind of company is that? A. Manufacturers of medicines and toilet articles.

Q. Will you give us some of the better known products produced by your company? A. Ipana toothpaste, Sal Hepatica, Vitalis, Mum, Double-Duty Tooth Brush, Minute Rub, Touche, Ingram's Shaving Cream. That's about the list.

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Q. And what position do you occupy with the Bristol-Myers Company? A. I am vice-president.

Q. For how long a time have you been connected with that company? A. For 20 years.

Q. Can you tell us something of your business experience and background, Mr. Bristol? A. It would largely be concerned with the responsibility for the public relations and the advertising, promotion of the products.

Q. Have you had any business experience in connection with any other company or field of activity? A. Yes. I

Lee Hastings Bristol—for Respondent—Direct.

have served for two years as president of the Association of National Advertisers. I am currently a director of the Advertising Research Foundation. Those are the two active organizations or associations at one time or another.

Q. What is the nature of each of those organizations? A. The Association of National Advertisers is a group of those manufacturers who advertise and who in the association concern themselves with matters having to do with public promulgation and use of advertisements and protecting their collective interests.

Q. Does the Bristol-Myers Company advertise its products nationally? A. They do.

Q. For how long a period have they done so? A. Since 1921.

Q. What do they spend a year, about, in national advertising? A. About \$5,000,000, a little in excess of that.

Q. Are you married, sir? A. I am.

Q. Have you children? A. I have two.

Q. What are they? A. Two boys; men, I should say.

Q. How old are they now? A. One is 20 and one is 26.

Q. Are they in the service? A. They are, both of them.

Q. At my request, have you looked at the matter which I told you has been complained of in the eleven issues of Esquire? A. I have.

Q. In your opinion, is there anything obscene, indecent, lewd, lascivious or filthy about any of the Varga drawings or verses which accompany them in any of those issues?

Mr. Hassell: I object. The same objection I made before.

The Witness: Overruled?

Chairman Myers: Yes.

The Witness: No.

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Lee Hastings Bristol—for Respondent—Direct.

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By Mr. Bromley:

Q. Have you read the textual material, the articles, and the armed services jokes? A. Yes, I have.

Q. What would your opinion be to the same question with respect to them? A. The same.

Q. Have you looked at the Sultan cartoons in these eleven issues, Mr. Bristol? A. Yes.

Q. What would your answer be to the same question with respect to them? A. Amusing, not obscene.

Q. Have you found anything, Mr. Bristol, in any of the eleven issues to which your attention has been called as having been complained of which, in your opinion, is obscene, indecent, lewd, lascivious or filthy? A. No.

Q. Does your company advertise in magazines and newspapers generally? A. It does.

Q. About how many magazines and periodicals do you use? A. We use a list for different products of probably 50, 50 different magazines.

Q. Do you use Esquire? A. We do.

Q. For how long a time have you used it? A. My recollection would be about five years.

Q. Before you place advertising in a magazine or periodical, do you make any investigation as to its standing or reputation? A. We do. We don't buy casually.

Q. What standard do you operate under in the selection of magazines as advertising media? A. Well, primarily, we are jealous of the type of company we keep, both as to advertising and as to the editorial content. The character of the magazine as reflected through its appeal has a bearing on our willingness or unwillingness to select it for use.

Q. Have you ever believed that Esquire has ever been of such a character as to reflect upon your company or its products?

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Lee Hastings Bristol—for Respondent—Direct.

Mr. Hassell: I object, Mr. Chairman.

Chairman Myers: Yes, expressing a belief would
not be competent evidence. 2839

Mr. Bromley: I will withdraw it.

By Mr. Bromley:

Q. What can you tell us about the general reputation of Esquire so far as it has one?

Mr. Hassell: I object to testimony as to general reputation.

Chairman Myers: That is one of the issues here, as I understand it. Objection overruled. 2840

The Witness: Well, we make our selection based on the type of audience that we believe it reaches, the character of that audience, its circulation, and their receptivity to our advertising appeal. In the case of Esquire, which I assume you asked for specifically, we felt it had a quality of modernity, a freshness and alertness that made it a desirable audience to reach with anything where the appeal was based on modernity and up-to-dateness.

By Mr. Bromley:

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Q. Would you say that it had a reputation as a hush-hush magazine in any sense of the word? A. I believe not, because we would not advertise in it if we did think so.

Q. Do you think it has a reputation as a risque magazine? A. No, I am not certain of my definition of risque, frankly.

Q. Well, do you think it has a reputation as a spicy magazine? A. No.

Hastings Bristol—for Respondent—cross.

2842

Q. From your knowledge of it, would you say that it customarily and regularly carried articles of an informative nature and fiction, both of which are of a high class? A. A great deal of it.

Q. Do you subscribe to it? A. I do.

Q. For how long a time have you had it in your house, Mr. Bristol? A. Since its inception, I believe.

Q. Have you ever had any complaints from any of your customers about the fact that you regularly used it as an advertising medium? A. No, indeed.

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Mr. Bromley: That is all.

Cross Examination by Mr. Hassell:

Q. Now, is the address of your concern carried in the advertising that you place in Esquire? A. It varies in some of our advertisements. I think in a majority of cases I believe it is.

Q. So that a person reading your advertisement in Esquire would not know where to write to if he wanted to, would he? A. Oh, I am sure he could. He could at least get it from the package or the product.

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Q. Would you say that Esquire has the reputation of being a sophisticated magazine? A. Yes.

Q. But not spicy? A. Yes, I should say so.

Q. If letters from readers of Esquire reproduced within the columns of the magazine itself characterize Esquire as being spicy, you would disagree with them, wouldn't you? A. Well, there is only one such letter, isn't there? I wouldn't call it letters.

Mr. Hassell: Well, one letter.

Mr. Bromley: It makes a lot of difference.

Lee Hastings Bristol—~~for Respondent~~—Cross.

By Mr. Hassell:

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Q. A letter which was published by the publisher. A. I should not consider as little evidence as that as conclusive.

Q. Why would you think the publisher would publish it if he thought it was a calumny or reflection on his magazine, sir? A. It is a hypothetical situation, because I don't recall the specific letter in the situation.

Q. Mr. Bristol, do you set yourself up as an expert on obscenity or lewdness, sir, or lasciviousness and filth? A. Probably only in an indirect way, that anyone advertising to a mass market is pretty jealous of his reputation and where he advertises and what he advertises.

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Q. The opinion you have expressed here with respect to the matter generally in Esquire and the particular material called attention to in this case is solely your own opinion, is it not? A. Oh, yes, sir.

Q. And others might disagree with you, might they not? A. Oh, they could. I think I have a sense of a fairly broad group feeling, but, after all, it is only my own opinion.

Q. They would be entitled to their opinion, would they not? A. Indeed they would, sir.

Q. Do you agree, Mr. Bristol, that the family is the foundation of our social system? A. I do.

Q. You think jokes questioning or dealing flippantly with the sex relations in marriage are entirely decent? A. I would ask you, if you don't mind, sir, to just define it a wee bit further, to clarify me on that. Then I think I could answer you.

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Q. For instance, a joke that would imply that a perfectly respectable married man with a reputation in his community for morality would get into bed in a Pullman berth

Lee Hastings Bristol—for Respondent—Cross.

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with a luscious blonde, a joke on that scene. Would you say that is entirely decent? A. It would depend, in my mind, on, frankly, the casualness or the flippancy with which it was treated and whether or not the person so seeing it was able to treat it in the lightness with which it might be presented.

Q. You recall the joke or alleged joke that I refer to? A. I would have to refresh myself on that, sir. Could you identify it for me?

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Mr. Bromley: Here (handing magazine in question to witness).

The Witness: My feeling is that it could not be read with a thought or imputation of it being a practice nor one to be encouraged in any sense. That is the reason I would accept it in the lighter way in which it was presented; personally, that is my own opinion.

By Mr. Hassell:

Q. You don't think that deals with illicit sex relations in a flippant manner? A. I don't feel it deals with that relationship unless by inference.

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Q. Would you say that the words "behind," "ass," and "son-of-a-bitch" are current in ordinary polite society, Mr. Bristol? A. I would question it.

Q. You would question that very much, wouldn't you? A. It is the vernacular but probably not very currently used. It has vulgarity.

Q. In decent, polite society? A. I have heard it used in a quoted way, in what I thought was very polite society, but it was only a quoted way, it was not used directly.

Lee Hastings Bristol—for Respondent—Cross.

Q. Do you recall the instances in which those words are used or one of them is imputed in this magazine? A. I don't think I recall it, sir.

Q. How much time did you spend reading this magazine in preparation for your testimony here? A. I saw the points pointed out, marked as indicated here, and read those. I had previously seen in the course of each of those issues as I had passed through them lightly. They had not impressed themselves upon me at the time.

Q. You didn't spend very much time going over this material to make up your mind before you testified, did you? A. Yes. I have an over-all opinion and was quite sincere about it.

Q. I am not imputing something you did, but I am asking you whether you spent very much time in reading this material and giving thought to the cartoons and the pictures. A. Frankly, no, sir, because my treatment of all this in the humor form is that it does not invite analysis. The humor is gone if you try to dissect it. It is like a story that is broken down into too fine a refinement.

Q. Do you recall the full page color cartoon showing the milk delivery woman, rather buxom, at the back door, and a man in an apron? A. I know the one you mean.

Q. Which states or tells her to come back later when the wife has gone to the factory. A. I do.

Q. Do you think that is dealing in a rather flippant manner with marital fidelity, so called? A. I didn't analyze it in that way. I thought of it in terms of the flippancy of the story, the exaggeration of a scene. I think fundamentally it is an old joke. It has been reversed for modern consumption. I don't think it is very original.

Q. A good many of these jokes are corny, aren't they? A. I suspect quite a few.

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Edith B. Cook—for Respondent—Direct.

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Q. You would not say, however, that that would in every instance remove their objectionable character if that was so, would you? A. Oh, I expect our own folk stories by repetition have lost their old kick.

Q. Do you recall the full page color cartoon in one of these issues of Esquire showing what appears to be the wife with a rather fulsome bosom, seated in the lap of the red-haired fuel oil man, dressed in overalls, and a cocktail table in front of them and cocktail glasses? It is the October issue, page 49. A. Yes.

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Q. Do you think this is dealing in a rather flippant manner with the marital ties? A. I think it is more a travesty on the scarcity of skilled labor, personally.

Q. You are speaking now of the point of view of an employer, Mr. Bristol? A. I should say so.

Mr. Hassell: That is all.

Mr. Bromley: That is all.

(Witness excused.)

Chairman Myers: Call the next witness.

Whereupon,

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EDITH B. COOK, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

Q. Will you give us your full name, please, Mrs. Cook?

A. Edith B. Cook.

Edith B. Cook—for Respondent—Direct.

Q. You live where? A. In New Haven, Connecticut.

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Q. Are you married and have you a family? A. I am married and have one daughter 12 years of age.

Q. Now, will you tell us what connection you have with any public welfare or children's associations, please? A. I am the executive secretary of the Connecticut State Welfare Association and I am at present the chairman of the Committee on Children and Youth in Wartime of the Connecticut War Council.

Q. Will you tell us the function of the Connecticut Child Welfare Association, please? A. That is an organization composed of a large number of citizens of the State which does educational and research work in the field of uncared for, neglected, and delinquent children. The organization was the chief factor in establishing the State Juvenile Court a few years ago, and we have done considerable work in cases of delinquency, and so on.

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Q. For how long a time have you been connected with that organization, please? A. For over ten years.

Q. Does the Committee on Children and Youth in Wartime advise communities in your locality concerning children? A. Yes. The chief interest of the committee at present is in a prevention-of-delinquency program and we are engaged in planning for a conference which we hope will help the community in a campaign for the prevention of delinquency, particularly in the teen age group.

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Q. Do you have any connection with any State hospital for the insane? A. I am the chairman of the board of directors of the Norwich State Hospital, which is one of the three State hospitals for such.

Q. That is located in Norwich, Connecticut? A. Yes.

Q. It is a State institution? A. It is a State institution.

Q. For the care of the insane? A. Yes.

Edith B. Cook—for Respondent—Direct.

2860

Q. Have you any connection with the Connecticut League of Women Voters? A. Well, I was for four years, until about two years ago, the president of the Connecticut League for Women Voters and I am now the vice-president.

Q. Are you a subscriber to the magazine Esquire? A. No, I am not.

Q. Has it ever been in your home, so far as you know, Mrs. Cook? A. Yes, I have seen it, but I saw it off and on and I see it in the homes of friends and in my sister-in-law's home.

Q. Now, have you at my request made an examination of the material contained in the eleven issues of Esquire for 1943 which has been specifically pointed out to you as having been complained of by the Post Office Department? A. Yes, I have.

Q. And have you with some particularity looked at the Varga girl drawings and their accompanying verses? A. Yes, I have.

Q. Would you tell this Board, please, whether in your opinion you have found anything obscene, lewd, lascivious, or indecent about the Varga girl drawings or accompanying verses? A. I have not.

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Mr. Hassell: I object.

Chairman Myers: Objection overruled.

By Mr. Bromley:

Q. Would you care to give us the basis or the reasons for your opinion, Mrs. Cook? A. I think they are very attractive pictures and I see nothing at all that would upset the morals of any people who looked at them.

Q. Have you also at my request read such articles and

Edith B. Cook—for Respondent—Direct.

pieces of fiction as "The Court of Lost Ladies", for instance?

A. Yes, I have.

Q. Will you tell us your opinion about that article particularly? A. Well, that particular article, of course, I think is a very excellent piece of reporting on a night court. I think it is almost like a Greek tragedy.

I think it is not only not offensive but personally I wish it could be published in a pamphlet because I think it is the best lecture on social hygiene that I have ever read.

Q. Do you see any objection to its circulation in a magazine which is read generally or is available generally to all classes of our society in this nation? A. Not at all.

Q. Did you read Mr. Paul Gallico's article on burlesque entitled "The Savage Beast In Us"? A. Yes, I did.

Q. In your opinion, is there anything obscene or detrimental about that article or the illustrations which accompany it? A. No, I don't think so.

Q. Did you read the piece of fiction, the story entitled "Portrait Above the Fireplace"? A. Yes.

Q. Did you find anything obscene, lewd, lascivious or filthy or indecent about that? A. No, I did not.

Q. Did you find anything which you considered to be detrimental to the morals of any class of society in George Jean Nathan's theatrical column, and especially where he referred twice, I believe, either to a "St. Louis sporting house" or "bawdy house"? A. I didn't get the beginning of your question.

Q. Do you remember those two references? A. Yes.

Q. In your opinion, is there anything obscene or indecent in the use of such words by Mr. Nathan in that article?

A. Why, no.

Q. Did you look at the series of four, I believe, Sultan cartoons which depict in various phases the sale, loan or

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Edith B. Cook—for Respondent—Cross.

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dealing in women as related to some current American phrase or idea? A. Yes, I did.

Q. In your opinion, is there anything obscene or indecent about those cartoons or their sub-titles? A. No.

Q. Did you read the two-page spread entitled "Gold-bricking with Esquire", in which excerpts from Army service men's camp papers are reproduced? A. Yes, I did.

Q. Did you find anything obscene or indecent in any of those jokes? A. No.

Q. Let me ask you generally whether following your consideration of all of the material which has been objected to in this magazine, you found any of it which in your opinion was obscene, lewd, lascivious, filthy or indecent? A. No, I did not.

Q. Do you think there is any part of it which would have a tendency to corrupt the morals of the youth of this nation? A. No.

Q. Or lower their standards of right and wrong with relation to sexual matters? A. No. I shouldn't be here if I did.

Mr. Bromley: That is all.

Cross Examination by Mr. Hassell:

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Q. Mrs. Cook, do you think you are an expert on obscenity, indecency, filthy and lascivious matter? A. I think I am a normal ordinary person and I think I have had considerable experience with young people and with young people who became delinquent, and to that extent I think that I would be an expert in knowing what was obscene, that is, in knowing what would affect their morals, because I am particularly interested in that.

Edith B. Cook—for Respondent—Cross.

Q. Do the young people who become delinquent confide fully and truthfully to you as to what induced them to be delinquent? Is that what you mean? A. I have done a good deal of studying on the subject, and I believe, therefore, that I am an expert in that sense.

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Q. Have you examined a great deal of questionable matter, printed matter, pictures, and so forth? A. Oh, I have examined some. I have examined the magazines that the high school youngsters read, at least, that are available for them.

Mr. Hassell: Mr. Chairman, I have to confess that I am perhaps rather provincial, or I don't know what you call it, but I feel a delicacy in questioning a woman about this matter involved in this case.

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Of course, there have been women present when I have been examining men, but in view of the broad general answers to the questions that she has submitted here I guess I have no other alternative.

I want the record to show that I approach the task with a great deal of embarrassment.

By Mr. Hassell:

Q. Now, let's take the January issue of Esquire, please. On the editorial page, page 6, boxed in, there is the title "Short Nuff".

2871

In the first paragraph of this material it is stated: "Esquire, the four bit magazine which is always busy as a little beaver sandwiching good advice between its spicy cartoons, comes up this month with a male Dorothy Dix who tells you how to pick a war bride."

Edith B. Cook—for Respondent—Cross.

2872 Would you agree with the statement of the writer of this article that Esquire is always as busy as a little beaver sandwiching good advice between its spicy cartoons? A. Well, I think there is a good deal of material in Esquire, as I have looked over it recently, that is not spicy as they indicate here. At the same time, there are cartoons and jokes which might be called a little coarse, which aren't quite nice, perhaps.

Q. I see. Not quite nice. Would you call those spicy or do you think that is what this writer means by "spicy"? A. I presume it is—perhaps a little coarse.

2873 Q. Going further down in this article, the last paragraph, first column, you will see beginning in the fifth line of that paragraph:

"Comes it then breeding (no, not that)".

Q. What do you think that means in that article? A. Breeding—I suppose that means intellectual background or something like that.

Q. I see. Going up to the top of the next column, the first full paragraph there, we find:

"The pay-off on what kind of a guy this Woodhead is comes quick. He figures a gal's dancing ability is worth 20 points. Sex he gives 10.

"So he'd rather dance—"

2874 Do you know what that has reference to? A. Why, yes, most anyone would.

Q. What does it have reference to? A. Well, I suppose he would rather dance. He is more interested in dancing than he is in sex.

Q. So the connotation to be derived from that would be that Woodhead was a dead man practically, so far as sex was concerned. Is that correct? A. I hadn't thought of that, but I suppose you could give that connotation to it.

Edith B. Cook—for Respondent—Cross.

Q. Now, in the item further down in that column, numbered 7, we find: "Juking—a. That's right. Just what you're thinking about . . . 400 points."

2875.

Q. What does that mean? A. Well, I suppose it means a good many things that young people do, go out to night clubs and dance. The way it is put here, of course, I think it has some reference to sex also.

Q. Would you characterize this article "Shor Nuff" as ribald humor? A. Well, I think it is a little stupid. It might be amusing enough. It is perhaps a trifle coarse or off color, but after all, one sees that in everything. It is not indecent.

2876

Q. There is nothing in it that is indecent? A. I don't believe so; nothing that I think would affect anyone's morals.

Q. Now, let's refer to page 83. You read this article by Gilbert Seldes? A. Yes, I read it.

Q. Had you seen this show? A. No, I did not.

Q. Star and Garter? A. No.

Q. You haven't seen that? A. No, I have not seen it.

Q. In the first paragraph of this article Seldes refers to Gypsy Rose Lee being a defendant against whose navel Clark finally blows a paper tickler.

Do you think that is an indecent reference, lady? A. No. Of course, everyone knows who Gypsy Rose Lee is if you read the newspapers, and she very likely—it talks about a strip tease here—so it is very likely she hasn't anything on.

2877

Q. If it had been testified heretofore by another person who has appeared here that that is one of the parts of the anatomy that Miss Lee keeps covered, would that change your opinion of this? A. No, I don't see any reason why it should.

Edith B. Cook—for Respondent—Cross.

2878

Q. Now, in the second paragraph of this article, down below the middle of the paragraph, is this statement and it starts: —the sentence is quite lengthy—it begins "Years ago he did a seduction step around Mary Boland." And going down it says:

"Weaving and winding his frame around tall show girls peering through his non-existent glasses into the bosoms he isn't tall enough to see unless he jumps."

Do you think that is an indecent description of this article? A. I think it is a bit off-color. I don't particularly care for it myself, but I don't think there is anything in it that would upset the morals of young people.

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Q. The next paragraph, the second sentence:

"Burlesque patrons are single-minded, if that's the right word."

Do you know what that refers to? A. I would suppose that it means that burlesque patrons go to see girls and go to see their legs and things like that.

Q. In other words, single-minded means sex doesn't it? They are interested in sex? A. Not necessarily. It means that they are interested in seeing girl's legs or girl's forms. I suppose in a way that is sex.

Q. Did you ever see a burlesque show, lady? A. I don't believe so.

Q. Going further down in that paragraph, it says:

"So you have girls stripping to a riotous dance or you have girls stripping not to a dance."

Do you think that is a decent matter to write about? A. I think you see it almost everywhere. Of course, the situation it seems to me is quite different nowadays. When I was young I didn't go to burlesque shows and I was brought up in the Victorian method or manner where everything was kept under cover, and, therefore, it was in a way more seductive than it is now.

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Edith B. Cook—for Respondent—Cross.

The young people today—I know my own child and older boys and girls—are brought up so they knew most everything.

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We don't wear as many clothes as we used to. I think it is a good deal better and a purer way to bring them up, and I don't think this kind of stuff or even a burlesque show, perhaps, upsets people's morals as much as it might have.

Q. Are you speaking from your own experience when you say the way you were brought up and the way your child was brought up? A. I know how I was brought up. My mother, who is over 70, said to me the other day: "I think the way I brought you up you were protected too much, and I think the way you are bringing your child up is much better."

2882

In general, we are a great deal franker these days, and, therefore, sex isn't necessarily impure and isn't thought of as impure.

Q. I see. But the point I want to call your attention to in that connection is that so far as you are concerned as compared to your child's upbringing, yours is more proven than your child's because your child is only 12 years old. Isn't that true? A. Perhaps, but I have lived for a good many years and I, therefore, have been able to see both kinds of upbringing.

2883

Q. Going ahead with this article, after the place where I stopped, reading:

"And since this is uptown stuff, you have the odd spectacle of Gypsy Rose Lee stripping awkwardly and self-consciously, which may be a novelty, but isn't very good fun. Certain little gestures as she fluffs the ruffles on her jacket are enticing; but the major part of her strip she does from under the cover of a bouffant dress, working

Edith B. Cook—for Respondent—Cross.

2884

strings and letting petticoats drop—and down to the planted scream in the audience and the laugh Miss Lee manages every night after the scream—it is just this side of the simple honest denudation she was capable of five years ago."

Do you see any indecency in that detailed description of Miss Lee's act in this burlesque show? A. I don't particularly. I think the whole thing is a little boring and stupid and it attempts apparently—or I think it does—to more or less debunk the burlesque show, which is exactly what I mean.

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There is nothing very exciting about it and I think this article attempts to indicate that is so.

Q. Doesn't the article, in fact, refer to very amusing and very entertaining parts of this show? A. Well, it may. I wouldn't say it wouldn't absolutely—

Q. Let's go ahead with it. The first full paragraph in the center column, page 83:

"Between Bobby Clark who appears in a long funny scene wearing flannel drawers and Miss Lee whose specialty is being dressed in three well placed, presumably provocative flowers, you have the essence of burlesque. In this particular show there is also a young slender dancer named Leticia who does a wonderful trick ballet dance—a trick because it is actually erotic"—

2886

Do you know what that means, lady? A. Yes, I know what that means.

Q. That is sexually stimulating or exciting, isn't it?

"... whereas so many of the hip grinds are not. There is also a character from the night clubs who makes her breasts jiggle."

Do you think that is an entirely decent matter to be in print? A. I think it is coarse and not in good taste.

*Edith B. Cook—*for Respondent—Cross.**

Q. "And this is considered funny, but I didn't think so, even at night clubs where her frankness was greater, her skill no more engaging. A stripper who does an orgiastic dance verges on the erotic."

2887

Do you know what "orgiastic" dance" is? A. Yes, I suppose so.

Q. Continuing:

"But the entertainment value isn't high. In fact, the burlesquers learned long ago that the strong emotions they wished to arouse are quenched by the cold water of comedy."

Then, in the next column he refers to Lamberti:

"Lamberti plays what he calls the 'xiphophone' with many a flourish; and as he goes into his big number ("Wishing") a tall cutie saunters in behind him and begins to strip; she sheds a garment just as Lamberti finishes a chorus; applause recalls her and starts him again; his bland and leering ignorance of why the piece is so popular (he played 103 choruses of it once at a Legion convention, he says) is masterly; he smacks his lips and flutters his tongue and waves his toupe and rolls his eyes—purely as a virtuoso of the xylophone. And even the old, sad, faithful lechers of the audience prefer him, I think, to the naked strip, so to speak, of some of the other acts."

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Do you see anything indecent in that? A. No, I think that is all in the same vein. It is debunking these burlesque shows, describing this one; and I think some of it is, as I say, a little coarse or a little off-color.

2889

Q. I see. A. But I don't see that there is anything in here that would be likely to contribute to the delinquency of any young people.

Q. You don't think there is anything in this article where it describes an erotic dance, that would induce a young person to go there and see that show? A. I wouldn't

Edith B. Cook—for Respondent—Cross.

2890

say it wouldn't; it may. But I think probably all the time they would be thinking of this particular article and it does debunk the whole thing a good deal.

Q. Going ahead with the article where I left off:

“The business of getting comedy out of the sexual appetites isn't an easy one. Infinite variety sex may have; but it's singleness of purpose dulls the brilliance of its techniques.”

That wouldn't change your mind as to the general character of this article, would it? A. No, I read it all and, as I say, I think that is all it does, and there are parts of it that are a bit coarse and I think it is rather uninteresting. If left to myself I would never read it from beginning to end.

2891 Q. In referring to the Varga girl characters from page 97 of this number, would you say that these characters are revealing of the feminine form? A. Yes, I think they are revealing. I think the girls are very lovely.

Q. You think they would be objectionable? I understood you to say none of them were objectionable from a decency standpoint. A. No, they are not objectionable.

Q. Do you think any of them would be objectionable if the filmy garments they had on would be entirely removed? A. I think it would be very much like the things you see in art galleries. They certainly are covered.

2892 Q. These Varga girls don't purport, nor are they offered in this magazine, to be art, are they, lady? A. Well, I think they are very attractive girls.

Q. Referring to the August number and the verse “August”:

“I find a cool, secluded beach
A perfect August shelter
But all the men who pass my way
Just look at me . . . and swelter!”

Edith B. Cook--for Respondent--Cross.

Do you think that costume conceals any part of her anatomy? A. Well, it certainly covers her.

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Q. But it is transparent, isn't it? A. Yes, I think it is transparent, more or less.

Q. You can see all of the lines and the curves of her body, can't you? A. Yes, as you can in a bathing suit.

Q. You mean you have seen a bathing suit that is as revealing as this costume, if it may be called— A. I have seen bathing suits which certainly revealed the figures of the girls who were in them, revealed almost every curve, too. I mean, we are used to seeing those things. That is the difference, I think.

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Q. I am comparing this costume, if it may be called such, with a bathing suit. Is that what you are doing, lady? A. Yes, I think that is what I am doing. I think a bathing suit would perhaps have something more in the back to hold it up, but she certainly is covered. And it would probably have an open midriff and be about the same on her legs.

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Q. You can see through this costume, can't you? You can get the tint of the flesh? A. Perhaps, I haven't especially noticed that.

Q. You have never seen a bathing suit just quite that thin have you, lady? A. Probably not. As I say, I have seen costumes which appeared to me to reveal the figure just as much as this, and we are used to seeing them on the beaches every summer.

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I happened to be talking to a friend of mine the other evening, a widow with two daughters, 14 and 15, and I asked her if she saw Esquire, because I was interested in her point of view, and she said, "Yes, once in a while", and I told her about the case down here and that the Varga

Edith B. Cook—for Respondent—Cross.

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girl seemed to be the thing objected to and she said, "My goodness, my daughter has them pinned all over her room".

Everyone's figure is revealed in a bathing suit. Nowadays we are a good deal more frank and I don't think it arouses at all the emotions that even a few inches of leg perhaps used to arouse in Victorian days.

Q. Do you think that pictures of this sort would be expected to or calculated to arouse the same sexual emotions in girls or women as they would in young men or men? A. Young men and young women are entirely different I suppose, or fairly different. They might arouse sex emotions, but so would almost any advertisement of a brassiere which you see in magazines very day.

2897

Q. You admit that the young boy or young man or man might have a different reaction to these pictures than a young girl or woman would have, do you? A. Yes, I do. I think the young men might have their sexual emotions aroused by a good many things, as I say, by advertisements that you see in every newspaper and magazine, like brassieres.

Q. But they are not in colors, are they; they are not embodied in natural colors, are they? A. I think they are.

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Q. In newspapers? A. Advertisements of stockings in magazines, like the Woman's Home Companion, the Ladies' Home Journal, and I think that type of magazine; things that occur in a fashion magazine like perhaps Vogue or something like that.

Q. But these pictures are so arranged that they are easy to put upon the wall to gaze at, aren't they, without being contaminated by any commercialism or advertising? A. Yes, that is true. But I still don't think it would upset the morals of most young people.

Q. It wouldn't? A. No.

Edith B. Cook—for Respondent—Cross.

Mr. Hassell: I have some more questions, but I
don't want to ask those questions of this witness. I
haven't the nerve to do it.

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Mr. Bromley: Well, I object to that.

The Witness: I don't think—I didn't object so
far.

Mr. Bromley: I don't think it is fair to take that
attitude. If you have any—

Chairman Myers: No, I don't think so. If you
have any questions ask them.

Mr. Bromley: You feel perfectly free to ask Mrs.
Cook any questions you want to.

2900

Mr. Hassell: After all I want to present the
Government's case properly, but I think that while
I still have some more of these questions, there are
some of these words involved in this case that I
don't want to go over with this woman.

Chairman Myers: Well, you don't need to. Some
wise man said that beauty lies in the eyes of the
beholder but I guess there are some people that have
other things than eyes in their head.

Mr. Hassell: Well, I have heard that philosophy
too; obscenity lies entirely in the mind of the in-
dividual, but I don't know as I subscribe to it.

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Chairman Myers: Well, we will take a recess for
ten minutes.

(Whereupon, a brief recess was taken.)

Chairman Myers: You may proceed.

Edith B. Cook—for Respondent—Cross.

2902 *By Mr. Hassell:*

Q. Mrs. Cook, will you admit that there are many indecent cartoons and jokes in these issues of Esquire? A. I would say that there are some cartoons and jokes which are a bit off-color, perhaps, but I think no more so than the jokes you see in a great many magazines or sometimes the jokes you hear at dinner parties.

Q. Would you say that there is a substantial amount of coarse material in this magazine? A. Well, there is matter as I say that is off-color, that is a little coarse perhaps in part.

2903 Q. You mean what? A. It is in poor taste.

Q. You mean coarse in poor taste? A. It is in poor taste, but nothing in my opinion that would at all affect the morals of ordinary persons whether young or old, and I suppose that is the purpose to keep up the morals of the community, of attempting to ban magazines.

Q. Do you in your welfare activity advocate that girls emulate some of the things portrayed in the jokes in Esquire involved in this case? A. Why, of course not, no.

2904 Q. What are you being paid to testify here, please? A. I don't know. I hadn't thought of it. I expect to be reimbursed for my time, naturally I expect to have my expenses paid, but otherwise I don't know, I haven't discussed it.

Q. You haven't been promised anything to come here to testify? A. No. I have been promised nothing. As I say, I expect to be reimbursed for my time naturally.

Q. Are you testifying here in the capacity of a crusader for the type of material that appears in Esquire? A. I am testifying here because I am interested particularly—I am especially interested in freedom of the press and at the

Edith B. Cook—for Respondent—Cross.

same time I am also interested in the prevention of delinquency, and if I thought that any young people would become delinquent from reading Esquire or similar jokes anywhere else or similar pictures which I think there are in a good many places, why I shouldn't be here to testify in favor of Esquire on the side that I am.

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But as I say I am interested primarily in the freedom of the press and not as an attempt to make us moral by edict, because I don't think it works.

Q. In other words, you don't subscribe to the enforcement of the non-mailable provisions of the postal obscenity statutes, do you? A. Yes, I do in that, I would be interested, as I say, in having magazines kept out of circulation that would contribute to the delinquency of young people, but I don't believe that Esquire will.

2906

Q. Do you think printed matter may contribute to the delinquency of young impressionable persons? A. I think some kind of printed matter might. Of course, as I said before, young people nowadays are brought up in a very frank way which it seems to me is a very good way, because I don't believe that they get the kick and the upset to their emotions out of a lot of these jokes that a lot of other people might that are brought up in a different way.

Q. Do you contend that the young adolescent man or boy would get the same reaction from the jokes and cartoons dealing with sex in these magazines that young girls would get from it? A. They might. I have never been a young boy so that I don't know, but I don't think it would be too different. Of course, I think that most of these jokes, most young people whether boys or girls would not analyze them to the same extent in that article. I mean, wouldn't analyze them to the same extent you have. I think they might whistle in seeing some of the pictures or something

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Edith B. Cook—for Respondent—Cross.

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and say "Well, that's very good" or something but I mean they would simply pass over it. It wouldn't mean any more to them than any of the jokes they see anywhere else.

I don't really think if you banned all reference to sex at all, for example, I think you would have to ban almost everything including the Bible probably. Sex in itself is, of course, not impure.

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Q. The dealing with sex relations in a flippant joking manner you think is not objectionable? A. No, I think it never has been considered so. We have had the old jokes about married people and the old mother-in-law jokes. I think most mother-in-laws are very sensible people. It doesn't make them any worse or better, and we still have the old mother-in-law joke, and after all if you can't have a laugh at things once in a while you wouldn't have any humor. I don't believe jokes about marriage or even about the sex relation would at all make a girl or boy feel any differently about the person he was going to marry, for example.

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Q. You think all dirty jokes, told by men to their men friends are not objectionable and not calculated to incite them sexually? A. No, I don't suppose so. I suppose most men do tell such jokes to each other and they are all human beings and in their family relations they seem to be pretty good people.

Q. You refer to young people passing over this type of material. You know that some young men pin up these Varga girls and they are held out as pin-ups, aren't they? A. Yes, and girls do too, as I see.

Q. In the March issue, page 10, there is a letter to the editor on putting Esky in a cap and gown in which this high school teacher refers to the Varga girls as "Vargavistas of forbidden fruit". Do you know what he means by that? A. Yes, I know what he means, of course.

Edith B. Cook—for Respondent—Redirect.

Q. Do you think that he refers to the sexual stimulation that may be procured by the men and young men from viewing such pictures? A. Well, that is evidently what he means.

Q. And down further in this letter he refers to the cover of Esquire as disturbing small town codes of conduct. Do you see anything objectionable in the covers of Esquire?

A. No, I think they are rather silly.

Q. That one you are looking at now shows some African women peeping over a hedge at Esky who is supposed to be the symbol of Esquire, in the nude, taking a bath in a tub, doesn't it? A. Yes.

Q. You think that has no indecent connotation? A. Well, I thought when I looked at it and from the fact that one of them is here holding her hand in front of her nose that probably she didn't like the odor of the pine bath salts, and that is what I thought it connoted.

Q. She wouldn't be adjusting her nose stick that she has inserted through the septum of the nose? A. I didn't even see that. I don't know. Of course, as I say, I doubt very much if the ordinary person, the very young person in looking at these pictures would analyze them in that way.

Q. These black people behind the hedge are goggle-eyed, aren't they? A. Yes; I should say they would be.

Mr. Hassell: That is all.

Redirect Examination by Mr. Bromley:

Q. Turning again to the March issue, page 10, looking at the end of the second column, don't you think that letter indicates very clearly that the writer thinks that Esquire

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Edith B. Cook—for Respondent—Redirect.

2914 is just as good as any magazine such as Harpers or the Atlantic except for the cover?

I call your attention to this sentence: "I am tempted time after time to bring a copy of Esquire to my senior literature class, and give my pupils the benefit of the excellent criticism of Mr. Phelps and the high-grade fiction of Manuel Komroff, Jesse Stuart and others. The only way in which this could be done, without disturbing small town codes of conduct, would be to somehow camouflage that bulge-eyed master on the front of each issue and make it appear like the front of, let us say, Harpers or Atlantic."

2915 Mr. Hassell: It reads "masher" doesn't it?

Mr. Bromley: What did I say?

Mr. Hassell: Master.

Mr. Bromley: The word is masher. I meant to say masher.

Mr. Hassell: All right.

The Witness: Yes, I thought that is the tone of the whole thing and when it refers to small town codes of conduct, why I think the writer is simply indicating that it is a small town and they perhaps have a Victorian code of conduct perhaps.

Mr. Bromley: That is all I have.

Mr. Hassell: That is all.

(Witness excused.)

Chairman Myers: Call the next witness.

Mr. Bromley: I should like to have the consent of the Board and the agreement of Mr. Hassell to put Mr. Gingrich, the editor, on, whom I would like to ordinarily produce for my last witness, with the

Arnold Gingrich—for Respondent—Direct.

understanding that since he is long I may interrupt him when I get other people available.

For instance, I have nobody here and won't have in the next five or ten minutes.

Chairman Myers: Is there any objection, Mr. Hassell? It might save some time.

Mr. Hassell: All right.

Mr. Bromley: Mr. Gingrich.

ARNOLD GINGRICH a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

Q. Will you give us your full name, please? A. Arnold Gingrich.

Q. You live where? A. Algonquin, Illinois.

Q. How old are you? A. 39.

Q. Married? A. Yes.

Q. What family have you? A. Three boys.

Q. How old are they? A. 15, 9 (is this Wednesday?) and 7.

Q. Where were you born and brought up, sir? A. I was born in Grand Rapids, Michigan, December 5, 1903. I was brought up there. My parents both came from Canada although my father's family has been in this country, in Pennsylvania, in Colonial times, and later moved to Canada.

My father was a Mennonite who married outside the Mennonite Church, married a Methodist, and upon their moving to Grand Rapids he adopted the Baptist faith, and I was brought up as a boy in the Baptist Sunday School.

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Arnold Gingrich—for Respondent—Direct.

Q. Where did you get your elementary education? A. 2920 The grade schools in Grand Rapids, Michigan. I attended Central High School there and graduated from that school.

Q. What did you do thereafter? A. I went to the State University at Ann Arbor, University of Michigan, and was graduated from there in 1925.

Q. With what degree? A. Bachelor of Arts.

Q. Did you have any other education? A. I had a little private tutoring in languages. I had a little additional education in the sense that while at the University I was employed in the University Library. There were four full time library positions open to students. I held one of those. Full time meant 54 hours a week. Many of those hours, however, were more or less the student's own. That is, he could use them to read or pursue any interests of his own as long as he was available on call for the various professors who might need his services for the gathering of materials for work in which they were engaged.

With that job went a few privileges that I would call additional educational advantages. For instance, we four who held those full time library jobs enjoyed a faculty rating. That is, we were considered members of the faculty and as a result we were able to attend all faculty functions, able to belong to faculty clubs, and you might say it gave an undergraduate some of the advantages of contact with the professors that might not be normally enjoyed by the average undergraduate.

Q. In your school career did you have any connection with the editorial boards of school or college magazines?

A. I was the humor editor, I believe, of the Central High School Helios, and in college I enjoyed a very brief career as editor for a matter of weeks of a revived magazine at Michigan called the Inlander. It had gone out of existence

Arnold Gingrich—for Respondent—Direct.

some years prior to my time and I was given the editorship of it when a movement among the undergraduate students was begun to revive the old Inlander, to restore it as a Michigan tradition.

I believe I contributed to the first issue of the revived Inlander to the extent of only contributing one poem in which my name was misspelled, and did not continue beyond that point. As a matter of fact, I don't recall now how long this revivified publication of Michigan tradition continued. I think only for a few issues, but other than that and an occasional contribution to the various student publications that were then in existence, that is, to the Michigan Daily and, I believe, to the literary magazine called Chimes, and one or two other campus publications, I had no active editorial participation in the student publications.

Q. What did you do after your graduation? A. Well, I would like to say that before my graduation I got married which influenced what I did after graduation.

Q. Well, after having gotten yourself married what did you do? A. Hot-footed to look for a job that would earn fifty dollars a week because I had that necessity upon me in order to prevail upon my mother-in-law to allow my wife to live with me.

I went to Chicago and looked for work in the advertising field, feeling that it was a short-cut to one's enjoyment of cakes and ale as opposed to the longer route that I had expected to follow if I had pursued literary activities.

That had, of course, always been my end aim, but I wanted to get ahead substantially in a financial way, so I looked for work in advertising.

Q. Did you get it? A. Yes, I got it. I got 34 jobs in something under 45 days, in all of which they were happy to hire me until they discovered that I really meant it

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Arnold Gingrich—for Respondent—Direct.

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when I said fifty dollars a week and I was 20 years of age.

After that length of time had gone by I finally managed to get a job that did pay fifty dollars a week in a group of trade publications, serving as the manager of the advertising service department. I had had just enough experience in writing ads during my days in school.

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I forgot to mention that I had written some ads for one of the local Ann Arbor haberdashers, Greenwood & Kilgore, and based on that experience managed to get this job in charge of the preparation of the advertisements for this group of trade magazines, engineering journals most of them, and I held that job for about a year and a half, mainly looking for an opportunity to get into something that would be at least more congenial subject matter.

The engineering journals were quite foreign to all my training and natural inclinations.

Q. What did you do then? A. So then I got a job at Kuppenheimer, maker of men's clothing, who I believe were at that time the second largest advertisers of men's clothing, next only to Hart Schaffner & Marx.

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Q. Is that in Chicago? A. That was in Chicago, both of these jobs. I should have said this was in Chicago. I went into the Kuppenheimer advertising department as one of their alleged bright young men, who dealt with dealer service. That is, it was our responsibility to prepare advertising and in fact handle the advertising appropriation for dealers in various assigned territories.

The situation in the advertising department at Kuppenheimer developed quite rapidly, in a fortunate manner in my favor, really just a lucky break, but the advertising manager was taken away from that department to be utilized on the road as sales promotion manager, so I was allowed to function as acting advertising manager after

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really a short time in their employ, and I functioned as acting advertising manager for about a year and a half, during which time I wrote the style books, the Saturday Evening Post ads; in fact, all the Kuppenheimer national advertising.

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Q. How long did you stay there? A. I stayed there until the end, very near the end of 1928.

Q. Then what did you do? A. Well, toward the end of 1928 I had a phone call from a man who said his name was Smart, S-m-a-r-t, and he identified himself as a young fellow just trying to get along in our field, in the field of men's clothing.

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He said that he and a partner of his were going to get out in the field of men's apparel some very ambitious advertising publications. That term is something of a paradox in itself and I had better explain it.

They were launching a magazine, the outward semblance of a magazine, which contained color reproduction of men's fashions, men's apparel, accessories. In addition to these direct color presentations of merchandise there were a few articles fore and aft of the real catalogue-like merchandise wherein the store would put its own imprint on the cover. In other words, such a store as John David in New York would issue the "Gentlemen's Quarterly" as being published by John David and sent free to its charge account customers.

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I was asked to come over and join them because they intended to expand and get out other publications of a comparable type for other large clothing chains. For instance, they contemplated one for the various stores of the Hart Schaffner & Marx franchise and another comparable one for the Fashion Park accounts, and I thereupon left Kuppenheimer to go into this then very new venture.

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Mr. Smart had enjoyed a spectacular success as a salesman of syndicated advertising materials, such things as posters displayed in banks to encourage the opening of savings accounts and things of that sort, and Mr. Weintraub came to him with this idea; in fact, with a predecessor publication called "Men Today" and getting together with Mr. Smart as the production end of it they restyled it, gave it a new name, and intended to bring out the magazine and broaden out the field in which Mr. Weintraub had begun alone.

I joined them at about January 1, 1929, and we then, according to the plan, launched these additional publications, and during the years—during the next year and a half, we added two more. One was a comparable magazine, a syndicated magazine, which really was a catalogue of merchandise and fashion offerings presented by the store over its own imprint, this one in the boys' field, "The Etonion", presenting boys' clothing; and in addition, we had a few other specialties which were sold to various stores. One was called "The Observer Broadside"; so for the next year and a half, say, we were active in this field as publishers, or perhaps we might properly be called producers of fashion advertising and fashion merchandising.

We built up in conjunction with the production of the syndicated magazine a fashion reporting service. We had men in the various style centers in this country and corresponding arrangements with the fashion reporters in the various fashion centers abroad whose activities were reflected in the styling of the pages presented in the fashion merchandise publication.

The matter was extremely expensive, very high grade color work reproductions. You might say our chief stock in trade was our ability to produce within commercial

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limits of expenditure the kind of four color work that had not prior to that time been commonly produced in this country.

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Some European houses had produced things of this character, but they were a novelty in this country.

For example, the publication "Gentlemen's Quarterly" which we supplied to these high grade men's stores cost them \$200 a thousand. Does that work out to 20 cents a piece? It was actually 20 cents a piece, and in the bank failure, that is, in the Black Friday of 1929, the bottom began to shake in this business. The day particularly arrived when no matter how high grade a store it simply was not economically justifiable to send out 20 cents at one mailing to one charge account customer, no matter how valuable his patronage might have been in the past; say, by the middle of 1930, we could plainly see that as successful as this venture had been, and as successful as it was going to be to the end of our contract year, the end of 1930, we would be to all intents and purposes out of business as at the end of 1930, because stores right and left were notifying us that after serving out their contract for this type of expensive advertising material they were not going to be able to go on with it.

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Q. What did you do next? A. We next tried to figure out how to preserve this fashion reporting service which we had built up in conjunction with these publications and turn it to some other use where we would not be hooked to such expensive productions as those I have mentioned.

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It occurred to us that with the depression increasing in its severity, not only would stores find it difficult to spend 20 cents a piece to send out such catalogues of luxury merchandise, but they might even find it hard economically to replenish their stocks, so quite possibly as an off-depres-

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sion substitute for new merchandise, new fashions, they might be able to display in a trade paper which in the same colorful manner would show the new merchandise and then if they were able to get a new customer in and convince him of the quality of their merchandise they might probably get him to order, all this without having to stock merchandise of this character, so we spoke about the creation of a trade magazine which was in the format of Fortune, which was then a new magazine.

This was in 1930. Fortune, as I recall, began with the January, 1930, issue.

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We created this trade magazine called "Apparel Arts" in the size and format of Fortune and the nucleus and the most important part of it was its fashion pages.

This with, just as the predecessor syndicated publications had been, full cover photographic life-like depictions of articles of apparel that had been selected by our fashion scouts in their various centers, and this magazine served in lieu of a stock of merchandise for many of the stores throughout the country.

They would keep it on their counters and when a man came in and asked for something in the way of a shirt or a tie that he didn't see in stock, they would say "Possibly you can see what you want in this magazine, Apparel Arts, and if you like something here we will endeavor to get it for you."

That magazine was launched in the early fall of 1931. It was very successful. It caught on instantly.

It also, in the advertising field, employed the same line of argument with the advertisers that we had in mind for the retailers themselves, that is, to be able to show by a full-color representation of the merchandise what they had that was new, and that quite possibly in depression circum-

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stances they could not afford to have a salesman take around to the retailers.

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So this magazine enjoyed what you might call a two-way stretch in meeting those emergency depression conditions.

Q. Has that magazine been published ever since? A. Oh, yes. In its inception it was a quarterly. It came out at \$1.50 a copy four times a year.

As that magazine prospered our organization grew. I perhaps should have said that as of the beginning of 1929, when I came to the organization, we numbered nine people, including our principals and the switchboard girl, and the office boy. After we had launched Apparel Arts, our organization began to multiply in size. We had perhaps 30 people in our organization by this time and we decided to follow up this successful formula of publication by adding another trade magazine, also in a field that was being very severely hit by the depression, and that was the field of home decoration. We called that Home Furnishing Arts.

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Also following up on the initial success of Apparel Arts we gave it a companion publication which we called Fabrics and Fashions. We then divided the four retailing seasons into wholesale and retail seasons, so that the same stores would have Apparel Arts as the trade magazine giving them their merchandise presentation for the wholesale spring season, let us say, followed by Fabrics and Fashions for the retail spring season.

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In Fabrics and Fashions we added swatches, which is the technical name for a snipping or clipping of the actual fabric, and these were mounted into position on the pages of Fabrics and Fashions so that pursuing this original line of counter display, the customer could not only see the full colored drawings of the various fashions, but could even feel the goods as well.

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Q. Now, will you come down to Esquire? A: I can't come down very quickly, because it is related both to the demise of the original publications "The Gentlemen's Quarterly", "Observer" and "Club and Campus", after the development of Apparel Arts, that we arrived at the birth of Esquire.

I will make it as fast as I can. I am trying to fix the date in mind.

Apparel Arts, having begun in 1931, I would say that it was toward the end of 1932 that we began to get an occasional inquiry from some of the stores to whom we had originally sold these syndicated magazines for their customers, asking us if we didn't think there was some way in which we could provide them with some counterpart of those no longer existent publications.

In particular, we had two inquiries, one from Rogers Peet and one from John David, in New York, both of whom had been clients for these old magazines, no longer distributed, asking if we could not, in some way adapt the large fashion pages in Apparel Arts to their use as a small magazine to be sent out to their customers—I mean small in the sense of relatively few pages.

As far as page size was concerned the format was large, it was that of Fortune.

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We began studying this question with an eye to somewhat adapting these color pages in Apparel Arts to the use of the retail stores for their customers, and we began making up dummies, trying to see if we could evolve a man's fashion magazine out of these full color fashion pages in Apparel Arts, and perhaps a wrap-around of the central nucleus of fashion pages in the form of a few articles fore and aft, devoted to articles on subjects primarily of interest to men.

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Our first concept was that these features would be confined entirely to care of one's wardrobe and to fashion information.

Our first dummy—upon figuring costs we thought it might be possible to produce such a magazine at a price of 15 cents per copy—but on appraising it rather severely as a venture it occurred to us that men being so much more self-conscious than women in their attention to clothes, such a magazine was foredoomed to failure. Whereas it is a perfectly normal thing for a woman to evince an interest in a magazine that is concerned with nothing but the matter of clothes, men would feel a little bit sissyish to be seen carrying away from a store a magazine that had in it no other content whatever than, let us say, a foppish devotion to the subject of clothes, so without offering that first dummy to the stores, we began to restyle it with the idea of sugar-coating this fashion pill a little more heavily than we had in this first dummy.

We made up a second dummy in which the outer wrapper of general textual material was diluted from the point of view of its attention to men's fashions exclusively, and we also incorporated a few non-fashion items into the color forms; so that this magazine for men would not be confined entirely and exclusively to the subject of men's fashions.

However, in this respect we saw the production costs mounting and it began to be apparent to us that the magazine we had in mind could not possibly be distributed free by the stores, nor could it even be sold for a quarter, let us say.

We thereupon refigured the entire project in terms of a fifty cent magazine, planning it as a quarterly to be sold by the stores at fifty cents to their customers, we to sell it to the stores at a normal wholesale differential between

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2950 the price they paid to us and the price they would expect to get from their customers.

The magazine was sold to the stores from a dummy. We presented it to them in the light of our previous record with fashion merchandising and told them quite frankly that we didn't even intend to produce this magazine in any quantity at all unless we would get from the stores throughout the country a sufficiently substantial mass order, in total that is from the various stores, to justify our taking such a risk in a time of depression, as to produce this quantity of very expensive color pages.

2951 The stores ordered the magazine on an outright purchase basis in quantity, just as they would order so many dozen suspenders or garters or sets of jewelry or any of the things they usually sell in the stores.

They bought from us X quantity of copies of the new proposed quarterly for men, which by that time we had given the name "Esquire".

We chose that name as being the approximate equivalent of "Mister", but at the same time as having rather a smart overtone of meaning, that is, that in the original sense of the term "Esquire", as I recall the dictionary definition, is the next rank below knighthood, and we thought of Esquire as meaning a little more than "Mister" and yet not being quite such a self-conscious word as "Gentleman".

2952 The magazine was launched, or, let us say, presented in dummy form, to its prospective market on March 4, 1933. That is, we sent our salesmen out to visit the stores with these dummy copies of this fifty cent magazine under their arms, and they all had to come back home because they couldn't get carfare on that day. It seemed like a rather inauspicious beginning for the fifty cent magazine, the fact that it happened to be launched on the day when everyone was scrambling around for carfare.

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The total number of orders from the retail stores ran up to approximately—within a matter of 1,000 or so either way—100,000 copies of the first issue, and since these orders were based on the entire series of four for the first year, this magazine began its existence with an assured circulation at fifty cents a copy of 100,000 copies.

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Before the time came actually to launch the magazine—I should say to publish the first issue of the magazine as the arrangements for the purchase by the stores had been made some months ahead—it occurred to us to put a limited number of copies on the newsstands.

We did not honestly expect to sell very many, but we thought it might assist the stores in their efforts to sell a magazine devoted to the development of the fashion consciousness of men, to be able to point out that it was at least a familiar sight.

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A man coming into a store and being asked by the clerk "Do you want to buy a magazine" might react a little more favorably if he had at least passed it a few times on the newsstands, than if he were approached cold and had never seen it before and was not prepared for the idea that it was a magazine.

We wanted to put on the newsstands about 25,000 copies, even though we knew, or had been told, at least, by experts in the circulation field, that there was not much chance in 1933 to sell any appreciable number of copies of a fifty cent magazine on the newsstands, but the news company would not handle that many so we compromised at a figure somewhat lower than that—I don't recall the exact figure—but somewhere between 3,000 and 10,000 copies, which were originally assigned to the newsstands of this first issue.

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Counter to all our expectations, when the magazine appeared for the first time, just about ten years ago—it was October 15, 1933—the stores managed to sell somewhere between 5,000 and 10,000 copies and the newsstand copies sold out like snowballs on a hot stove, and the news company immediately began calling for additional copies which we got back from the stores and supplied to the newsstands, with the result that we wound up with our first issue just about opposite from what we had expected to be the result.

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That is, where we thought we would sell between 5,000 and 10,000 possibly on the newsstands, and 100,000 through the stores, we sold between 5,000 and 10,000 in the stores and 100,000 on the newsstands.

The news company officials advised us to make it a monthly matter, said that this was a very rare occurrence in the magazine field, to strike what they called "a natural" and urged us to get out another issue as quickly as possible.

With our small organization we had a very hard time getting out the first issue and were looking forward with some consternation to the thought of getting it out again in three months and we argued that we couldn't possibly get out another one in anything like 30 days.

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However, in view of their urgency and insistence upon it, we compromised with them and managed to get out the second edition in 45 days, the second copy appearing on December 5, 1933. That second issue was distinct from the first issue in two respects. First, it read "Esquire, The Magazine for Men" on the top of the cover, where the first issue had read "Esquire, The Quarterly For Men", and it also carried the legend "Now issued monthly."

Also with the second issue we featured the first appear-

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ance of the little Esky character. We did not call him Esky at that time—in fact; we never called it anything,—but the public began referring to it as Esky and we rather reluctantly at long last began referring to it that way ourselves.

We thought it was a rather sissy appellation and never wanted to use it ourselves.

We had hoped in the first issue to have such a character on the cover, bearing in mind the fashion background of the publication and the fact that we had expected it to be almost entirely a magazine sold through men's stores—we had hoped to get some distinctive device for the front cover that would suggest smartness in the same way that Saks Fifth Avenue advertisements were characterized by a little character called "The Major".

We didn't want to copy Saks Fifth Avenue, but we wished we could find some little symbol of smartness and distinction that would be to Esquire what The Major was to Saks Fifth Avenue.

We had begun our endeavors to create or settle upon such a character during the period of the inception of the magazine, but never had managed to get one to our satisfaction in time for the first issue.

So for the first issue we had a sporting scene. It was a painting done by an advertising artist named Edward Wilson, depicting two hunters alighting from a private plane on a lake somewhere in the Canadian woods. I can best characterize it by saying it looked like very much what you would expect to see on the cover of a catalogue of Abercrombie & Fitch. That was its general nature.

However, in our search for a cover character that would be distinctive, that would be different from any existing magazine, that would, we hoped, become a symbol for

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smartness in the field of men's fashions, we had any number of little caricatured figures and sketches made, all of which were disappointing to us in that they either too closely resembled the Major in the Saks Fifth Avenue advertisements or didn't suggest anything in the way of smartness and distinction. That is, if not too close to the Major, they became low comic characters and that, of course, was anything but what we were after.

We had managed, however, in time for our second issue, to get a little actual figurine or statuette of this character made, and it occurred to us that a new departure in magazine covers would be to let this little figure, who was going to become our cover symbol, be photographed in full color from an actual display of the set up of the objects themselves, rather than utilize a pictorial cover design.

This character, we were anxious to preserve as our own, because we wanted it to stand for the magazine and we didn't want it to be the property of any one artist, or, as it turned out, sculptor. We had this character first made in sculpture by a sculptor named Sam Berman, who had done some caricatures in sculpture for the magazines at that time—that is how we happened to first see his work—and we had a composite made of the various sketches that we liked best.

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We combined the features of the figure as sketched by John Groth and as sketched by E. Simms Campbell, and placed them in one character and had them done in sculpture three-dimensionally, by Sam Berman, so the Esky character or what was later called the Esky character made its first appearance with the first monthly issue of the magazine.

Mr. Bromley: With the Board's permission, I would like to interrupt and call Mrs. Weissman.

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Chairman Myers: Very well.

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(Witness temporarily excused.)

Mrs. RAE L. WEISSMAN a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

Q. Mrs. Weissman, will you give us your full name, please? A. Mrs. Rae L. Weissman.

Q. And where do you live? A. 7 Spruce Street, Great Neck, Long Island.

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Q. Are you married? A. I have been married. I am not married at the present time.

Q. Have you any children? A. No.

Q. What is your present occupation or activity now, please? A. I am engaged now in research for the New York City Committee on Mental Hygiene.

Q. Will you tell us something about that committee, please? A. Well, the New York City Committee functions as the authorized committee on mental hygiene for New York City as a whole and for the State.

Q. What has been your training and educational background, please? A. I am a graduate of New York University, also a graduate of the Smith College School for Social Work, which is a graduate school.

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Q. And since your graduation from the Smith College Graduate School, what have you done? A. Well, I have engaged in all forms of social work. I have done psychiatric clinic work, I have done public work, I have done family case work, research—other forms of research. I

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think that about covers it. I have been working all these years with children.

Q. With what associations or organizations have you been connected? A. American Association of Psychiatric Social Workers, and American Association of Social Workers.

Q. And for how many years since your graduation have you been engaged in this work? A. Oh, I would say about 18 years.

Q. Are you an Esquire subscriber? A. No, I am not a regular subscriber, though I do read the magazine from time to time.

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Q. For how long have you been familiar with it? A. Oh, a number of years. I would say I have known the magazine for at least five or six or seven years.

Q. At my request, have you examined the eleven issues for the year 1943 of Esquire? A. Yes, I have.

Q. And have you paid particular attention to those parts of those issues which have been objected to by the Post Office Department as we have informed you? A. Yes, I have.

Q. Can you tell us whether or not with special reference to the Varga girl drawings, and the verses accompanying them, there is anything therein contained which in your opinion is obscene, filthy, lewd, lascivious, or indecent?

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Mr. Hassell: I object. It appears, Mr. Chairman, this testimony is cumulative, somewhat similar to the testimony of the other lady who preceded this witness.

Chairman Myers: This is a little different character of work. Here we have a social worker who

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is qualified as such. The objection is overruled unless you want to make some agreement as to that testimony.

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Mr. Hassell: I will be glad to stipulate she will testify substantially as the other lady.

Mr. Bromley: I think this testimony goes beyond that. I had hoped tonight to get up a stipulation with regard to other witnesses in this field, but I feel this testimony goes beyond that.

May we have the last question read, please?

(Question read.)

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The Witness: No, I don't think that I would agree with any of those terms as describing the Varga girls.

Q. What is your opinion about the Varga girl drawings, Mrs. Weissman? A. Well, on the contrary, I see the pictures of the Varga girl as a representation really of the type of physical perfection that I think few, if any, women are fortunate enough to possess.

To me, I would prefer to look at something which is represented as beautifully as that is than to some of the ugly and grotesque drawings that some of the artists produce.

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Q. Do you find in these drawings or in the verses which accompany them, anything which in your opinion would tend to corrupt the morals of youth or of any class of society with which you are familiar? A. No, I don't think so, because they simply are pleasing to the eye and I think to a normal, healthy mind that is all that can possibly be interpreted from those drawings.

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Q. Do you find anything in them which in your opinion would tend to lessen standards of morality toward the sex relation? A. No. I repeat again that an individual who is developed normally and healthily can not be corrupted by something that is inanimate and that, moreover, simply presents a piece of life, something that is natural and commonly seen by everybody and known as something which is perfectly within one's knowledge, and so forth.

Mr. Hassell: May the witness speak a little louder? I didn't hear all of that answer.

Chairman Myers: Will you read the answer, please?

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(Answer read.)

The Witness: I just want to add there that that would be the reaction of a person again who is normal and healthy and perfectly sane, and so forth.

By Mr. Bromley:

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Q. Have you read the pieces of fiction and the articles which have been pointed out to you in these eleven issues, as having been objected to by the Post Office Department?

A. Yes, I have.

Q. I draw your particular attention to Gallico's article on burlesque, entitled "The Savage Beast in Us."

Did you read that article? A. Yes, I did.

Q. Did you find anything in it that was either indecent, filthy, obscene or lascivious? A. No.

Q. What is the basis of your opinion that that is a perfectly decent article? A. To me it merely describes a situation which unfortunately exists.

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I have been in night courts, I have witnessed the procedure, I think the article is a very faithful reproduction of what goes on—

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Q. I am not talking about the night court. I am talking about the burlesque article. A. I beg your pardon? That article simply meant to me an exposure really of a form of entertainment which is pleasing to some people but, what it has exposed is the fact that this form of entertainment necessarily provokes erotic stimulation and, from that point of view, I think it is sound and important too, a demonstration that it is not necessarily the form of entertainment which corrupts or impairs the morals of people, but rather situations themselves, and the reporting of it, moreover, is a factual one, and I can't see anything immoral in reporting a fact.

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Q. Do you think there is anything in the Gallico article by way of sly or leering reference to what goes on in a burlesque house which would cause the readers of this article to decide to go there and see for themselves the performances on the stage? A. Not necessarily. That might arouse curiosity in some people.

One appears at certain places in accordance with one's moods or interest or particular motivation at the time, but I don't think it will necessarily draw someone for immoral stimulus or erotic stimulus.

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Q. Do you think the publication of an article like that in a magazine of general circulation would have any tendency to corrupt the morals of youth? A. No.

Q. Now, coming to the article about the night court, which is called the "Court of Lost Ladies," what is your opinion with respect to it? A. As I started to say before, I feel it is a faithful representation of an unfortunate situation which exists in our society today and as such I think it is an important sociological document.

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Q. Do you think there is anything obscene or filthy about it or any references contained in it? A. No, I don't.

Q. Did you read the piece of fiction entitled "Portrait Above the Fireplace"? A. Yes.

Q. What is your opinion with respect to it? A. Well, I liked that article very much. I thought it sustained a quiet mood of inspiration to a particular individual who through it and by it, bettered himself in life.

Perhaps it was only an illusion but nevertheless it helped that particular person to achieve something which he might not otherwise have achieved.

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Q. Do you think the conclusion of the story, especially in its development of the fact that the portrait was that of a madam in a red light district, rendered the story or that particular part of it, indecent or obscene? A. No, because it was treated as something that was inspiring rather than degrading; it added to the dignity of the man rather than the degradation of the man.

Q. Do you find anything which in your opinion would tend to corrupt morals of youth in Mr. Nathan's references to bawdy houses or St. Louis sporting houses, in his dramatic criticism column in one of these issues? A. No, I don't think so.

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Q. Do you think current standards of morality, as you know them, sanction the use of terms such as that in print in magazines of general circulation today? A. Yes. I think one runs across them in every publication, pieces of literature, newspaper, magazines and books. They are quite acceptable terms.

Q. Did you notice the four so-called Sultan cartoons in these magazines? A. Yes.

Q. Did you find anything in the obvious reference to the eastern practice of selling slave or harem girls which, in

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your opinion, would tend to lower standards of right and wrong on the part of the readers of this magazine? A. No.

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Q. Did you find anything in any part of the material, Mrs. Weissman, whether it be pictorial or textual, which in your opinion was filthy, obscene, lewd or indecent? A. No.

Q. Do you think any of this material would have any effect toward corrupting morals or lowering moral standards of any class of our society with which you are familiar? A. No.

Q. Have you ever had any association with any mental hygiene clinic of any hospital? A. Yes, I have.

Q. Where was that? A. Mental hygiene clinic at Michael Reed Hospital in Chicago.

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Q. And with any other hospitals? A. Mental hygiene clinic—this is not a hospital—it was a community center, mental hygiene clinic.

Q. Where? A. At Philadelphia.

Q. Any others? A. No, not any other hospitals.

Q. Have you had any connection with the Jewish Social Service Association of New York City? A. Yes, I have. Excuse me, Mr. Bromley. I omitted one hospital I did have association with, and that was the New York State Psychiatric Hospital and Institute in New York City.

Q. Have you ever been connected with the Department of Welfare of the City of New York? A. Yes, I have.

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Q. In what division? A. Case supervisor in a large district office in Brooklyn, the Home Relief Division.

Q. A department of the City of New York? A. Yes.

Q. For how long were you there? A. Almost three years.

Q. Have you had any connection or done any work in connection with Bellevue Hospital? A. Not in the mental hygiene clinic. However, I have been connected with Bellevue in regular medical social work.

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Q. And have you done any work in connection with the New York School of Social Work? A. Yes, at the Psychiatric Institute and State Hospital.

Mr. Bromley: That is all.

Cross Examination by Mr. Hassell:

Q. Mrs. Weissman, you said you had been married. What is your marital status just now? A. I am divorced.

Q. How long were you married? A. Approximately seven years.

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Q. Do you contend that the Varga girl pictures and verses in these eleven issues of this magazine would be calculated to have the same effect from a sexual stimulation standpoint on girls as they would on boys? A. If you mean the absence of erotic stimulation, yes.

Q. Do you think the reaction a girl, a young woman, or a woman, would have to those pictures and verses would be identical to that to be obtained from them by an adolescent boy or young man or man? A. I'm afraid I didn't quite get your question, Mr. Hassell.

Mr. Hassell: Will you read the last question?

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(Question read.)

The Witness: Why, I believe that there are different reactions in different people to many things. I don't think that two people have the same reaction to the same thing, necessarily.

Q. And as to matters of this kind, do you think there is any distinction as to the sex of the individual, as to

Rae L. Weissman—for Respondent—Cross.

the reaction that he or she will get? A. In connection with looking at a picture?

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Q. Yes. A. Perhaps there might be this difference. I think that in spite of the fact that perhaps very few women, as I indicate before, possess the physical perfection that the pictures indicate, that most women would derive a deep sense of gratification in the thought that the female form is so beautifully portrayed.

I think that might be the reaction in a woman looking at something that is beautiful and which is perhaps a symbol which she might read into it.

Q. Do you think adolescent boys, young men or men, derive any sexual stimulation from looking at pictures of nude women or near nude women? A. No, I don't think so. My own experience, whenever we have had to deal with sexual problems in children, is that whatever distortions exist have come about through the inner development of the child, rather than the external stimulus.

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In other words, if there is misinterpretation or extreme reaction of a sexual nature, that is considered a distortion and is something which is related to other problems of the child, not necessarily to viewing a picture of a woman partially clothed.

Q. Do you say that it is impossible to get any erotic stimulation, that is, on the part of a man, from looking at the picture of a nude woman? A. I don't say a man might not get an erotic stimulation. Whatever stimulation a man gets from viewing anything is purely a subjective thing. That is, he reads into it or he reacts in relation to his own need.

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In other words, if he has extreme erotic needs, perhaps he would derive unusual or extreme satisfaction from looking at a picture, but I think that is an abnormal situation.

Roe L. Weissman—for Respondent—Cross.

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I don't think that a normal person will have that kind of an extreme reaction.

Q. Isn't it a fact that most of the individuals you have had to deal with are abnormal cases? A. Not necessarily. I think there are degrees of normalcy.

Q. Degrees of normalcy, and these abnormal cases have come up in your experience? A. Yes. I have had experience with a range of problems, perhaps from dealing with minor difficulties to perhaps rather extreme ones, yes.

Q. You have never done any police work, have you? A. No, I have not.

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Q. Have you ever learned in the course of your social work that a large majority of criminals arrested have obscene pictures on their persons? A. I think those people are sick people to begin with, Mr. Hassell.

Q. But you have heard that is a fact, have you not? A. Yes, but they are decidedly sick, abnormal people.

Q. And by far the greater majority of the people you have had experience with in these insane asylums and these other places, are people that are abnormal. They are below the average, are they not? A. Yes, the people who are confined are pretty extreme, yes, but I have also had considerable experience with people who are living in the vicinity with children, who are not in any way overtly sick. That is, they may have minor difficulties of one kind or another but they are not preventing them from attending to the usual routines, that is, going to school or attending to the normal functions in life.

Q. But they have shown some indications of abnormality or you would not be called in to help, would you? A. Yes, if you want to consider that social maladjustment, for example, is a real abnormality.

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Rae L. Weissman—for Respondent—Cross.

Q. What did you mean by your statement that the normal individual can not be corrupted morally by anything that is inanimate? A. We were discussing the drawings, the pictures. To me they are inanimate. They don't possess flesh and blood.

Q. That would apply to filthy pictures, the French post card type? A. Yes.

Q. And you think that would not corrupt the average normal individual? A. I don't think the average normal individual would be interested in looking at so-called filthy pictures. They would hold no interest.

Q. Now, what age would that individual be? A. I think any age.

Q. He might just have arrived at puberty or he might be a year or so older or he might be graduating from high school and entering college? A. Yes.

Q. Or he might be at that age and never have had the educational advantages I have indicated. Is that true? A. That is right.

Q. Whether male or female? A. Yes.

Q. Have you noted any what we might denominate as dirty words in Esquire? A. No.

Q. Any immodest words? A. Immodest, no.

Q. Any off-color words? A. No.

Q. Any indecent words? A. No, sir.

Q. Are you sure you have read all of this material to which attention has been called here? A. Yes, I have.

Q. You have read all of the material in each of the eleven issues? A. Yes.

Q. But you would not call any of the words to be encountered in that material in any way immodest, off-color, or indecent? A. I would not, no.

Q. You would not? A. No.

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Rae L. Weissman—for Respondent—Cross.

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Q. Do you happen to have in your mind the words that I am thinking about, without expressing them here, out of a sense of delicacy?

Mr. Bromley: Do you mean can she read your mind?

Mr. Hassell: I am asking the lady if she knows what I am talking about.

The Witness: I only know what words you express.
Mr. Hassell. I don't know what you have in mind.

By Mr. Hassell:

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Q. For instance, the word here, shall we say, describes the parentage of the mother of the individual addressed as being a female canine?

Mr. Bromley: He means "son-of-a-bitch."

The Witness: Thank you, Mr. Bromley.

By Mr. Hassell:

Q. Do you think that is an entirely decent word, commonly used and accepted in polite, decent society? A. It is a very common form of expression. I wouldn't say it myself; I don't think it is polite.

Q. You don't think it is polite? A. I don't think it is polite.

Q. You think it is coarse? A. I think it is a bad choice of words.

Q. Mrs. Weissman, do you consider the family the foundation of society? A. I do.

Q. Do you consider jokes dealing lightly with the sexual relations in marriage as indecent? A. If I understand you

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Rae L. Weissman—for Respondent—Cross.

correctly—do you mean there is a connection between jokes on marriage and the—

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Q. I mean the sexual relation between man and wife, fidelity and that sort of thing. A. Do I consider them indecent?

Q. Jokes of that sort? A. No, I don't.

Q. You do not? A. No.

Q. So a joke in the form of a cartoon which would indicate that a man was going to have some relation with a woman after his wife got away, you wouldn't think would be indecent?

Mr. Bromley: I wish you would produce the cartoon and not your own summary of it, Mr. Hassell.

3002

By Mr. Hassell:

Q. Do you recall the full page color cartoon of the man leaning out of the kitchen door and the rather buxom milk maid, and his apparently whispered remark to her to return after the wife had gone to the factory?

(Book containing cartoon handed to witness.)

A. I don't see that this has anything to do with sexual relations.

Q. Do you recall the full page color cartoon in the October issue at page 49? A. Yes.

Q. And the man shown there is apparently the indignant husband, isn't he? A. He doesn't look indignant particularly, I think.

Q. The eyes are rather glaring. A. He may be the husband but he doesn't look indignant to me.

Q. His eyes are glaring, aren't they? A. Yes, they are prominent.

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Rae L. Weissman—for Respondent—Cross.

3004 Q. Do you think he shows great pleasure at seeing his wife seated in the lap of the fuel oil man? A. I don't think there is much of any kind of emotion registered in his face. It is just a joke to me, that is all I see in the whole cartoon.

Q. You don't think this joke would reflect on the sanctity of marriage and the marriage vows? A. Oh, no.

Mr. Bromley: Doesn't it depend on how much fuel oil he has got in the house, Mr. Hassell?

Mr. Hassell: I object to counsel's facetious remarks.

3005 Mr. Bromley: I will withdraw it.

By Mr. Hassell:

Q. The legend underneath the cartoon "Hello, dear—this is the gentleman who sells us our fuel oil," the cocktail glasses, the shaker on a table in front, and a rather buxom, that is the young lady seated on the fuel oil man's lap, has rather oversized breasts, does she not? The expression on the fuel oil man's face as he embraces her, the attitude of the figure who we will call, for convenient and ready reference, the husband.

3006 You say that there is no off-color or objectionable or indecent connotations to be derived from this cartoon? A. I don't see any. I think it is merely a commentary on what is a very touchy situation today, that is, fuel rationing. I think it is a joke on an actual situation.

Q. Where does the joke come in? A. Well, that is the way I see it. It is merely a humorous comment.

Q. Well, how is it a joke to you? Apparently you don't view it as I do, or others have done here. A. Well, all it means to me is that perhaps a little petting or a little neck-

Rae L. Weissman—for Respondent—Cross.

ing is the way one gets by with the emergency situation today on fuel.

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Q. The cocktail glasses and the shaker, the attitude of the male and female figures there seated on the couch would not convey any different idea? A. It would not to me. It simply means that she has also offered him a drink in order to ease the general situation. That is to get a little oil.

Q. Did you read the story on page 77 of the February issue "Home Sweet Ruby Street"? A. Yes, I did.

Q. Did you note the cartoon in the lower part of the page 77, and the textual descriptive matter in conjunction therewith? A. Yes.

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Q. Would you say that this story or article could be described as somewhat sordid and in bad taste? A. I don't see it that way at all.

Q. You think it is perfectly proper to describe a scene depicted in that illustration in conjunction with the language descriptive of the scene in the article? A. Well, to me it is not an extreme or an unusual case. I know that what this depicts is an actual situation in life. I know that in crowded Harlem tenements families live together in close proximity and this is a natural occurrence in that particular status of life. That also goes on in white sections, in communities where the sociological conditions are very poor, and so forth.

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Q. You would say the fact that it may depict or does depict a true scene in life makes it decent to publish it and spread it on the pages of a magazine distributed all over the United States? A. I think it is decent from this point of view: That this is an actual situation that exists and it is serious.

Q. In other words, you don't think any obscenity can be derived from truth? A. That is right, I do not.

Q. Anything that is true is not obscene? A. That is right.

Rae L. Weissman—for Respondent—Cross.

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Q. No matter into how much detail it goes as to sexual relations between the sexes, is that right? A. Well, that is a sweeping statement. In general, I would subscribe to it. I don't think that anything that is naturally, biologically and commonly accepted in practice is obscene.

Q. And the writing in detail about such a biological function and depicting it by figures would not be obscene or indecent? A. Are you inferring that it was actually reproduced in such detail?

Q. No, I am going back to our original question and your answer.

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~~Mr. Hassell?~~ Mr. Reporter, will you read the question?

(Record read.)

By Mr. Hassell:

Q. Anything that is true is not obscene. Now we get a little closer to cases and go into a little more detail into truth.

Do you want to amplify your original answer? A. No, I don't.

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Q. What are you being paid to testify here, Mrs. Weissman? A. The arrangement that was made was that my expenses would be taken care of and I would be paid for my time.

Q. Paid for your time? A. Yes.

Q. At what rate? A. My usual salary rate.

Q. How much is that a day? A. Well, I haven't really figured it out. My salary is \$3,600 a year.

Q. Did you get a leave of absence from your employment to come down here to testify? A. Yes.

Q. How did you happen to come here to testify, Mrs.

Rae L. Weissman—for Respondent—Cross.

Weissman? A. Mr. Doran came to see me and told me about
the—

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Q: Who is Mr. Doran? A. Who is he?

Q. Yes. A. Mr. Doran is—

Mr. Doran: I am—

Mr. Hassell: I wanted to identify him.

The Witness: Came to see me and explained the situation concerning the charge that the Esquire magazine was obscene and that the possibility was that the second-class mailing privileges would be withdrawn, and on that basis he asked me whether or not I thought in my opinion any of the articles, any of the drawings or any of the cartoons in Esquire were obscene or lewd. I told him I did not think so and he asked me then if I would testify.

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Q. This is all in one interview Mr. Doran had with you?

A. Yes.

Q. You told him you didn't think any of these matters in these eleven issues would fall in that category at that time?

A. Well, the question was first asked generally whether or not I considered the magazine obscene and I said no, and then he asked me about the specific drawings and stories and cartoons cited as obscene; whether or not I had the same opinion about those.

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Q. He went over all those matters with you at that time, did he, Mrs. Weissman? A. No, he merely mentioned some of these articles and asked whether I knew them or not, and so forth.

Q. He mentioned some of them? A. Yes.

Q. And then you told him you would appear and testify and the arrangement was made: is that right? A. Yes; since

Rae L. Weissman—for Respondent—Redirect.

3016 I felt that the magazine as a whole could not possibly be classified as lewd or obscene. As a matter of fact, in my estimation the magazine as a whole represents to me a superior brand of literature. I enjoy the stories and the cartoons, and so forth.

Q. Does it have a reputation for being risque, Mrs. Weissman? A. I wouldn't call it risque.

Q. Do you know what position Mr. Doran occupies with Esquire? I want to get this on the record. A. No, I don't know that.

3017 Mr. Bromley: He is an associate of mine. He is an investigator. He has no connection with Esquire.

Mr. Hassell: All right; that is all.

Redirect Examination by Mr. Bromley:

Q. When you used the word truth, Mrs. Weissman, when you and Mr. Hassell used the word truth in the questions which were asked you and which you answered, was your reference intended to be a report of true conditions? A. Yes, the factual truth as it is in reality; actually a literal definition of the word truth.

Q. When you were connected with the Department of Welfare of the City of New York, was its commissioner Mr. Hodson? A. He was.

Q. Did that department have a very large number of people who were on home relief under the New York State laws? A. Yes.

Q. So your contact was, was it not, with people in the poorer, if not the poorest, classes in the City of New York? A. Yes.

Q. Do you think you are reasonably well aware of their moral standards and of their moral conditions and of the conditions in which they live? A. I believe so.

Rae L. Weissman—for Respondent—Redirect.

Q. Do you think that there is anything in any of this complained of material in Esquire which if called to their attention or made available to them would have an adverse moral effect on them? A. No, I don't believe so.

Q. By the way, did you ever see Esquire very much in the homes of people on home relief? A. No, not very much; they couldn't afford it.

Q. So far as conditions in Harlem are concerned, this story about this family of Negroes living in one room is not an exaggeration, is it? A. Not by any means.

Q. You know, do you not, that among other things it is fair to say that the reform in the jail system in our country was brought about largely, if not primarily, by long continued publicity with respect to such conditions? A. Yes.

Q. Would you not say that it was a socially desirable thing, so far as conditions in Harlem are concerned, if more articles like this were brought to the attention of the public, the conditions under which these people live? A. Yes, indeed. That was the reason I used the word or term important sociological document in connection with the story on night court. I think there is a similarity there.

Q. Those of us who reside in the City of New York and had a recent experience with almost, if not a near race riot which originated in Harlem? A. Yes.

Q. You are aware, are you not, that it has been openly charged that one of the causes of that disturbance was the fact that unscrupulous landlords gouged on tenants to the extent that families were forced to eat, sleep and perform natural functions all within the limits of one four-walled room? A. That thing is coming out from time to time in various studies that are carried on by various commissions from time to time, and the report has brought out all this material substantially. Unfortunately, nothing much has

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Rae L. Weissman—for Respondent—Redirect.

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been done about it. All I know is that these situations exist; I know it intimately because I have visited and worked with these people that lived under those conditions.

Q. Now, coming back to the so-called nasty words in these issues. You said you did not approve of the word son-of-a-bitch. Do you have any objection to its use in descriptive literature, remembering that it was used once in these 11 issues in connection with a story of a rough and ready merchant marine sailor? A. No, I don't react strongly to the word. I just wouldn't use it myself. I think it is simply a reflection of a person who is in a particular stage of life. Merchant marine seamen use the word freely. I have seen it in other stories, I have seen it in magazines, have heard it coming from the lips of soldiers and sailors, and it does not invoke any particular reaction.

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Q. Do you remember Mr. Nathan's quotation from one of the "Dead End" boys which occurred in one of his columns, in which the words "Jesus Christ" are used and the word "crap" is used? That article in which Nathan lists things to which he objects. A. Yes.

Q. Do you think it is morally corrupting for a magazine of this kind to publish in a column like Nathan's a quotation like that used by one of the "Dead End" kids? A. No, I don't think it is morally corrupting. I think again it is taken from actual life and those words were actually used by those people.

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Q. Mr. Hassell had reference also to the use of the word "behind" in the story "Offensive on the Home Front."

Did you find anything morally corrupting in the use of the word "behind" in describing a woman's posterior? A. No, not at all. I think it is a literal anatomical description.

Q. Is it offensive when applied to a woman? A. No, women use it very frequently.

Rae L. Weissman—for Respondent—Recross.

Q. You mean, you have no objection to it? A. No.

Q. I think I have mentioned all the dirty words. No, there is one other, asterisk. The asterisk sign was used in connection with a quotation from a Far Western paper. The story about the libels that Dave Day went through in his paper. Do you remember that article? A. Yes.

Q. That has been read here to indicate that asterisk means ass-to-risk. Did that occur to you? A. No, it didn't at all.

Q. Now that you know that possible interpretation, does that change your opinion with respect to that article? A. Not one bit.

Mr. Bromley: That is all.

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Recross Examination by Mr. Hassell:

Q. These people you refer to on home relief in New York, did they confide in you the very things that induced them to be erotically stimulated? A. No.

Q. As a matter of fact, people on home relief are largely interested in shelter and food, are they not? A. That is right.

Q. Now, with respect to your further definitions of truth, assisted by counsel, it is true that the sexual act takes place, is it not? A. Yes.

Q. Do you mean to say that it is not obscene to portray it or describe it in detail? A. No, it is not obscene.

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Mr. Hassell: That is all.

Mr. Bromley: That is all.

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(Witness excused.)

Colloquy.

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Chairman Myers: Well, I hope that counsel will be able to get together on the stipulations talked about. It may do a lot to shorten up the hearing.

Mr. Hassell: We might meet at ten o'clock in the morning to allow us to do that.

Chairman Myers: Very well. We will adjourn until ten o'clock tomorrow morning.

(Whereupon, at 5:00 o'clock p. m., the hearing was adjourned until Thursday, October 28, 1943, at 10:00 o'clock, a.m.)

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HEARING OF OCTOBER 28, 1943.

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PROCEEDINGS RESUMED

Chairman Myers: All right, gentlemen. I hope we have some satisfactory stipulations.

Mr. Bromley: We have, Your Honor, as a result of this morning's recess. I think we have accomplished a very considerable saving in time, and with the Board's permission I would like to read the stipulations we have entered into in the record.

Chairman Myers: All right.

Mr. Bromley: In view of possible ambiguity which existed as to the position taken by the Post Office Department with respect to whether the publication Esquire complied with the fourth condition of the statute relating to second-class mailing privileges (39 U. S. C. 226) and in view of the further fact that this ambiguity was clarified only after the witnesses, Smith and Croteau, had completed their testimony before this Board and left the jurisdiction, it is hereby stipulated and agreed that each of said witnesses had they been asked the following question would have given an affirmative answer:

Question: Based upon your examination of the eleven cited issues of the magazine Esquire for the period January through November, 1943, will you state whether in your opinion said magazine is devoted to the dissemination of information of a public character or to the arts, literature or sciences and whether the distribution of such magazine is in the public interest.

It is further stipulated that the record be and

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Deposition of Dr. William Allen Neilson—for Respondent.

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hereby is amended to insert said question and answer with the same force and effect as if the same had been contained in the respective examinations of the two above-mentioned witnesses.

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It is hereby stipulated and agreed by and between the Post Office Department and the Respondent herein, with the approval of the Hearing Board, that the following persons whose names, addresses and qualifications appear in the record pursuant to this stipulation would, having agreed to appear and testify before this Board, give substantially identical testimony on examination both by the Post Office Department and Respondent as that already given by the witnesses identified in said statements of qualifications or as indicated hereafter in said statements, and that their testimony may be considered by this Board and by any subsequent tribunal before which the record of this hearing may be presented with the same force and effect as if each of said persons had personally appeared and actually given such testimony.

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DR. WILLIAM ALLEN NEILSON. College president, author and educator. Born March 28, 1869. M. A., University of Edinburgh, 1891; M. A., Harvard, 1896; Ph. D., Harvard, 1898; LL. D., Harvard, Brown, Amherst, Edinburgh, Dartmouth, Princeton, Oberlin, Mt. Holyoke; L. H. D., Williams College; Litt. D., Yale; President Emeritus of Smith College; Associate Editor of the Harvard Classics; Editor-in-Chief Webster's New International Dictionary.

Would have given substantially the same testimony with respect to college age groups as that of Herbert Smith of

*Depositions of Clark Shaughnessy and Major J. L. Griffith—
for Respondent.*

Francis W. Parker School, Chicago, Illinois, and that of Professor Ernest Osborne of Teachers College, Columbia University; is of the opinion that none of the objected to material is in any way deserving of any of the Post Office Department's accusations of lewdness, obscenity, lasciviousness, indecency or filth, and that the worst that he could possibly bring himself to say about any single item of the cited material is that some of it might be considered as lacking in taste.

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CLARKE SHAUGHNESSY, Graduate of University of Minnesota; Head Football Coach of Tulane University, New Orleans; University of Chicago; Stanford University, Palo Alto, California; Present Head Football Coach at the University of Pittsburgh.

Mr. Shaughnessy would have given substantially the same testimony as that given by Congressman Samuel Weiss both to the effect that there was nothing whatsoever objectionable in any of the cited issues of the magazine and as to the positive value and excellent quality of the regular sports features of the magazine.

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MAJOR JOHN L. GRIFFITH, Commissioner of Athletics for the Western Collegiate Conference Association comprising Universities of Michigan, Illinois, Iowa, Indiana, Purdue, Wisconsin, Minnesota, Ohio State and University of Chicago; Secretary-Treasurer of the National Intercollegiate Association; former President of the National Collegiate Athletic Association; Former Coach Drake University; Director of Drake Relays; Prominent Athletic Officer in First

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*Depositions of George Jean Nathan and Mary Ellen Chase—
for Respondent.*

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World War; Member of Nation's Physical Fitness Committee.

Major Griffith would have given substantially the same testimony as that given by Congressman Samuel Weiss both to the effect that there was nothing whatsoever objectionable in any of the cited issues of the magazine and as to the positive value and excellent quality of the regular sports features of the magazine.

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GEORGE JEAN NATHAN, Editor, author, critic. Regular contributor to Esquire magazine. Generally recognized as one of the ranking authors in the American theatre and a dramatic critic of forty years standing; author of approximately 30 volumes, chiefly concerned with the theatre: for many years has campaigned against "dirt" on the American stage, and, like Mr. Channing Pollock, would have testified to the lack of any indecency in the objected to material and, as for affirmative testimony, would have given substantially the same testimony as that of Mr. Channing Pollock concerning the literary value of the magazine's contents.

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MISS MARY ELLEN CHASE, Educator and author; Professor of English Literature at Smith College, Northampton, Massachusetts; Member Modern Language Association of America and American Association of University Professors; B. A., University of Maine, 1909; M. A., University of Minnesota, 1918; Ph.D., University of Minnesota, 1922; Litt. D., University of Maine, Bowdoin College, Colby College. Born: Blue Hill, Maine, February 24, 1887; Author of 20 books. Miss Chase, based upon her experience with girls of col-

*Depositions of Bennett Alfred Cerf and Felix M. Morley—
for Respondent.*

lege age, as indicated by her qualifications and employment, would testify that in her opinion none of the material complained of is obscene, lewd, lascivious, filthy, or indecent, or would have any harmful effect upon girls of college age as she has known them at Smith College since 1926.

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BENNETT ALFRED CERF, Book Publisher. Born: New York, N. Y., May 25, 1898. A. B., Columbia, 1919; Litt. B., Columbia School of Journalism, 1920. Vice-president, Boni & Liveright, publishers, 1923-1925; founded Modern Library, Incorporated, 1925, and since president; founded Random House, Incorporated, 1927, and since president. Served in O. T. C., Camp Lee, Virginia, 1918. Member Pi Lambda Phi, Phi Beta Kappa, Pi Delta Epsilon. Clubs: Dutch Treat, Overseas Press (N. Y. City). Editor: Bedside Book of Famous American Stories, 1936; Great German Short Stories, 1933; Bedside Book of Famous British Stories, 1940; Anthology of American Plays, 1941. Contributor to Saturday Review of Literature, Publishers Weekly, New York Tribune, etc.

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Mr. Cerf would have testified substantially the same as Mr. Channing Pollock.

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FELIX M. MORLEY, President Haverford College. Haverford, Pennsylvania, A. B., Haverford College, 1915; Rhodes Scholar, Oxford University, 1919-1921; A. B., 1921; Hutchinson research fellow, London School of Economics and Political Science, 1921-1922; Ph.D., Brookings Institution, 1936; Litt. D., George Washington University, 1940; LL.D., Hamilton

Deposition of Felix M. Morley—for Respondent.

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College, 1941, University of Pennsylvania, 1941. Reporter Philadelphia Public Ledger, 1916-1917; Washington Bureau United Press Association, 1917; Washington Bureau Philadelphia North American, 1919; Member Editorial Staff Baltimore Sun, 1922-1929; Correspondent in Far East, 1925-1926; Geneva, Switzerland, 1928-1929; Lecturer on current political problems, St. John's College, Annapolis, Maryland, 1924-1925; Director Geneva office of League of Nations Association of U. S., 1929-1931; became member of staff of Brookings Institution, Washington, D. C., 1931; Editor Washington Post, 1933-1940; President Haverford College since September 1, 1940; Director National Metropolitan Bank of Washington. Ambulance work, British Army, Flanders, 1915-1916; R. O. T. C., 1917; Special Service, U. S. Department of Labor, 1917-1918. Awarded Pulitzer Prize for editorial writing, 1936. Cutler Memorial lecturer, University of Rochester, 1941. Fellow Royal Economic Society (Great Britain); Member Phi Beta Kappa, Council on Foreign Relations, American Council, Institute Pacific Relations, American Political Science Association, Public Affairs Commission, Member Society of Friends. Author: Unemployment Relief in Great Britain, 1924; (Hart, Schaffner and Marx prize essay) Our Far Eastern Assignment, 1926; The Society of Nations, 1932.

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Mr. Morley's testimony would be substantially similar to that of Professor Ernest Osborne of Teachers College, Columbia University. Mr. Morley has stated it to be his opinion that there is nothing obscene, lewd, lascivious, filthy or indecent in any of the cited issues, and that although some of the material, including the article entitled "The Unsinkable Sailor" on page 95 of the February issue, does not appeal to him personally from either an aesthetic or literary viewpoint, he does not find even that article out of place in a sophisticated magazine of the type of Esquire.

*Depositions of J. Halsey Gulick and Marjorie Hope Nicolson
—for Respondent.*

J. HALSEY GULICK, Headmaster of Proctor Academy, Andover, New Hampshire, and Director of Luther Gulick Camps, South Casco, Maine. Member Northeastern Association of Secondary Schools and Colleges, Northeastern Association of Camp Directors (Past President), New Hampshire Headmasters Association, Northeastern Vocational Guidance Association. Born Springfield, Massachusetts, December 27, 1899,

His testimony is substantially the same as that of Herbert Smith and, insofar as camp experience in particular, substantially the same as Professor Ernest Osborne of Teachers College, Columbia University.

MISS MARJORIE HOPE NICOLSON, Educator, Professor of English Literature at Columbia University and former Dean of Smith College (1929-1941). A.B., University of Michigan, 1914; A.M., University of Michigan, 1918; Ph.D., Yale University, 1920; Litt. D., Mt. Holyoke College, 1933, University of Michigan, 1937; Member of Modern Languages Association of America and Member of its Executive Council since 1929, Member of American Association of University Professors, History of Science Society, Senator of Phi Beta Kappa since 1927, Contributor to Studies in Philology, Philological Quarterly, Modern Language Notes, Modern Philology, Studies in Philology, Annals of Science.

Has studied all of the objected to material and based on her knowledge and experience is of the opinion that it is in no way obscene, lewd, lascivious, filthy or indecent, has no tendency whatever to corrupt the morals of girls of college age nor to affect their standards of right and wrong as regards the sexual relation.

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Depositions of Stephen Jerome Hannagan and Philip Wieting Lennen—for Respondent.

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STEPHEN JEROME HANNAGAN, Advertising expert. Born Lafayette, Indiana, April 4, 1899. Student Purdue University, 1917-1919. Began as reporter, Lafayette Morning Journal while attending high school, became sports editor and city editor; with Indianapolis Star, 1918-1919; with Russel M. Seeds Co., advertising agency, Indianapolis, 1919; became director of publicity Indianapolis Motor Speedway, 1919; with United Press, New York, 1920, later feature writer and New York columnist for Newspaper Enterprise Association and United Feature Syndicate; became head of own publicity organization, 1924, and conducted public relations for International 500-mile motor race at Indianapolis, City of Miami Beach, Florida, Gene Tunney, Jack Dempsey, Gar Wood; vice president Lord & Thomas, advertising agency, New York, Chicago, 1933-1935; publicity officer under own name, N. Y. City, since August, 1935, conducting publicity for Sun Valley, Id., Coca-Cola Co., Union Pacific R. R. Co., City of Miami Beach, Fla., etc. Member Sigma Delta Chi. Contributor to Cosmopolitan, Colliers, Liberty, etc.

Mr. Hannagan's testimony would have been substantially the same as that given by Lee Bristol and Raymond Gram Swing.

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PHILIP WIETING LENNEN, Advertising expert. Born Syracuse, N. Y., June 30, 1887. Student Trinity Chapel Preparatory School, N. Y. City. Began as junior copywriter, mail sales department, A. W. Shaw Co., Chicago, sales manager, 1907-1910; vice president Royal Tailors, Chicago, 1911-1923, Erwin-Wasey Co., Inc., Chicago, 1923-1924; President, Lennen & Mitchell, Inc., New York, since 1924. Member St. Nicholas Society.

Mr. Lennen's testimony would have been substantially the same as that given by Lee Bristol of Bristol-Myers Co. and Robert Orr of Lennen & Mitchell, Inc.

Lloyd H. Hall—for Respondent—Direct.

Chairman Myers: I think you both ought to be congratulated on getting so much testimony out of the way.

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Has the Respondent any further witnesses?

Mr. Bromley: Yes, sir; we have, Mr. Chairman; we have Mr. Hall.

LLOYD H. HALL, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

3056

Q. Will you give us your full name, Mr. Hall, please.
A. Lloyd H. Hall.

Q. Where do you live? A. Garden City, N. Y.

Q. What is your business, Mr. Hall? A. I have an advertising agency and market research organization, and as part of our organization conduct an editorial analysis of some thirty leading magazines which is published on a monthly basis in a report form.

Q. For how long a time have you been in the advertising business? A. I have been in my own business in the advertising business since 1931.

Q. And this editorial analysis bureau of which you speak, what is its corporate name? A. We have simply established it as the Editorial Analysis Bureau of the Lloyd H. Hall Company.

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Q. What is the Lloyd H. Hall Company? A. It is a proprietorship.

Q. And what is its business? A. Its business is advertising and market research and editorial analysis.

Q. And it has a department or bureau which is called the

Lloyd H. Hall—for Respondent—Direct.

3058

Editorial Analysis Bureau; is that right? A. That is right.

Q. What does that bureau do? A. That bureau classifies the editorial material in the magazines covered, measures the lineage under each classification, and issues a report each month with that statistical data.

Q. What magazines does it cover? A. It covers some thirty magazines; national weeklies such as Saturday Evening Post, Colliers, Liberty, Look, News Week, Time, and we have the New York Times magazine section; we have the woman's group magazines, like Good Housekeeping, Ladies Home Journal, McCall's, Parents Magazines; general monthly magazines such as American, Cosmopolitan, Red Book, Esquire; fashion magazines such as Mademoiselle, Vogue, Harpers Bazaar; the home magazines, such as American Home, Better Homes and Gardens, House and Garden, House Beautiful; national farm papers such as the Country Gentleman, Farm Journal, Successful Farming—I would have to refresh my memory—

Q. That is enough. That gives us an idea.

What kind of reports do you issue, and how frequently?

A. Each month.

Q. In printed form? A. In printed form.

Q. And is it the only one of its kind in this country? A. In so far as we have ever known, yes.

Q. What is its purpose? A. Its purpose is to furnish information on one factor which is important in the selection of media to carry an advertising message.

It is designed to show the advertising setting that the magazine furnishes for that advertising message, to break down the editorial material into some nineteen main classifications:

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Lloyd H. Hall—for Respondent—Direct.

Q. Such as what? A. National affairs, foreign affairs, business and industry, children, health, home furnishing—

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Q. Fiction? A. Fiction, general interest material, cultural interest material, and other classifications of that ilk.

Q. Now, you show the analysis of each one of these magazines, so far as editorial content is concerned, each month, do you? A. We do.

Q. And you break it down both as to numbers of lines and percentage of the total content of this magazine? A. That is true to this extent: The percentages given for the various editorial classifications are based upon the total editorial as 100 percent, and then we show the number of lines for the complete magazine, including advertising, and allot a figure to the editorial matter that that bears to the total.

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Q. Is that commonly accepted in the publishing and in the advertising field as an authoritative analysis of editorial content of magazines? A. Yes. I believe that it is. It has been encouraged by publishers in the field because they felt it filled a niche which was necessary and needed, and we never had our authority questioned on that particular.

Q. For how long a time has this been issued month by month? A. Since 1938.

3063

Q. This is a commercial venture, I take it? A. That is true.

Q. Who are your customers? A. Our customers are publishers and advertising agencies and advertisers.

Mr. Bromley: Will you mark this book entitled "Editorial Analysis Bureau, October, 1943," for identification.

(The book referred to was marked for identification as Respondent's Exhibit No. 46.)

Lloyd H. Hall—for Respondent—Direct.

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By Mr. Bromley:

Q. Is Exhibit 46, for identification, the last issued monthly editorial analysis book for the year 1943? A. Yes, it is.

Q. Does it show the editorial content of the magazines you have mentioned, and others, not only for the month of October but for all of the year of 1943? A. To date.

Q. To date? A. Yes.

Q. What is the charge, if you don't mind telling us, to your customers for this book furnished monthly over a year? A. Eight hundred dollars for the annual service to publishers who have more than one publication that we classify or analyze. Five hundred dollars a year for publishers where they have only one magazine that is represented for the service.

Q. How many advertising agencies are your customers? A. We have about 21 or 22 agencies who buy a little bit shorter service than that. It is issued twice a year instead of monthly.

Q. Are they, generally speaking, the more prominent advertising agencies? A. Yes, sir. Batten, Barton, Durstine and Osborn; Erwin Wasey and Company; The Compton Company; Benton and Bowles Company; and many others.

Q. All of them clients of yours? A. Yes, and others of that character where they have a wide enough diversity of accounts to be interested in such an item.

Q. If I wanted to get your estimate of how much of the textual material of Esquire in the month of October was devoted to national affairs, could I find a sheet in here which analyzes the October issue of Esquire which would give me the textual percentage devoted to national affairs?

A. Yes.

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Lloyd H. Hall—for Respondent—Direct.

Q. Could I find it for foreign affairs? A. Yes.

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Q. And for sports? A. Yes.

Q. Is that found on page 25 of this Exhibit 46, for identification? A. Yes, it is.

Q. Page 27 is the page which analyzes the editorial content of Esquire for October; is that right? A. Yes, that is true.

Q. Does that give the same analysis for the preceding ten issues of Esquire for the year 1943 in a different column?

A. Yes, a cumulative figure.

Mr. Bromley: I offer the exhibit in evidence.

Mr. Hassell: I object, Mr. Chairman. This is manifestly, from counsel's description, a summary of matter that under this classification we already have in evidence in this proceeding. I did not catch counsel's reference to it, whether it covers more than these eleven issues, or covers all of these eleven issues, or a part of them, or what part of them. It is not clear what he means by editorial matter. I assume he means all textual matter outside of the advertising.

Mr. Bromley: That is right.

Mr. Hassell: But I submit this simply serves to further muddy the waters here. We have these eleven issues that are involved here before you. You can very easily glance through them and see what the whole magazine is. There is no controversy, so far as the Government is concerned. The only question is as to whether this magazine contains other material or other matter that may be of interest to the readers.

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Lloyd H. Hall—for Respondent—Direct.

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Chairman Myers: Wouldn't that stipulate out this question raised on "b" in the notice, dissemination of information of a public character?

Mr. Hassell: No, it would not.

Mr. Bromley: This I think the Board will find to be a most helpful aid in an analysis of what kind of magazine it is, which I do not believe any human being can do without an expenditure of a tremendous amount of work. I mean if you undertake to do the job you could get a general idea, but it would take you quite some time.

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Chairman Myers: Is this addressed to the point that is raised on the dissemination of information of a public character?

Mr. Bromley: Yes, sir.

Chairman Myers: Objection overruled.

(The book heretofore marked for identification "Respondent's Exhibit No. 46," was received in evidence.)

By Mr. Bromley:

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Q. In connection with the preparation of this analysis did you have the assistance of an independent advisory board of gentlemen in no way connected with publishers?

A. Yes, we had.

Q. Do they supervise your work and pass upon the classification of material generally? **A.** Yes. We question them when it comes to a matter of classification, or the inclusion of publications in the service. Any matter of general policy which has to do with the service.

Q. Now, who are those gentlemen who composed that

Lloyd H. Hall—for Respondent—Direct.

committee for the year 1943? A. Well, Mr. H. H. Dobbersteen of Benton Bowles Agency. I believe he is the immediate director of Benton Bowles.

Mr. W. J. O'Donnell of Batten, Barton, Durstine & Osborn Agency. Mr. T. N. Tveter, who is the immediate director of Erwin Wasey, Inc.

Mr. Guy Richards, who is the vice-president of the Compton Agency in New York.

Incidentally, we consulted these gentlemen at the time we were starting this thing, and it is partly because of their interest in the thing that we went ahead with it and developed it as we have.

Q. Now, on pages 1 and 2 of Exhibit 46, there is a table which classifies the magazines for which this service is covered, isn't there? A. There is.

Q. And magazines like Good Housekeeping, Ladies Home Journal, McCall's, Woman's Home Companion, True Story, Parents Magazine, and Household are classified as women's magazines; is that right? A. That is true.

Q. I notice you have a classification, general magazines, and in that classification appears American Magazine, Cosmopolitan Magazine, Red Book Magazine, and Esquire Magazine? A. That is true.

Q. Is Esquire of the type of magazine which you call "general"? A. Yes, it is.

Q. And you have classified on those two pages all of the magazines either as farm, fashion, general, home, woman's or weeklies; is that right? A. That is true.

Q. Now, on page 27 of Exhibit 46 is the page devoted to Esquire Magazine, isn't it? A. Yes.

Q. And, all the other pages in the book are devoted to other magazines? A. That is true.

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Lloyd H. Hall—for Respondent—Direct.

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Q. Will you tell us on the basis of the first ten issues in 1943 of Esquire, because this is all this exhibit covers just through October—the November issue isn't out yet? A. That won't be out until the 15th of November.

Q. On the basis of the first ten issues of 1943 of Esquire, how much of the editorial comment of the magazine was devoted to fiction? A. We have a total of 11.3 percent for the first ten issues.

Q. That is what I am talking about. A. Yes.

Q. And how much of it was devoted to matters of general interest? A. We have a total of 37.2 percent.

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Q. And how much of it to matters of cultural interest? A. 8.8 percent.

Q. And how much of it to wearing apparel and accessories? A. A total of 7.7 percent.

Q. And how much of it to travel and transportation? A. A total of 2.7 percent.

Q. And how much of it to sports? A. A total of 10.1 percent.

Q. And how much of it to food? A. A total of 2.5 percent.

Q. And how much of it to amusement? A. A total of 7.1 percent.

Q. And how much of it to foreign and international affairs? A. A total of 4.1 percent.

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Q. And to national affairs? A. 4.5 percent.

Q. Can you tell us generally over these ten issues how much of each issue is advertising and how much is editorial context, and when I say "editorial context," I include pictures. How is that broken down, do you know? A. I can read the figures right off there.

Q. Does it show here? I want to know how much is advertising over the first ten issues and how much is other than advertising. A. We carry the total editorial figure

Lloyd H. Hall—for Respondent—Direct.

and the figure for the total magazine which includes editorial and advertising. We don't actually give an advertising percentage, but it may be had from deduction.

The total editorial material amounted to 64.1 percent of the magazine for the first ten issues this year.

Q. That means that 35 per cent of each issue was advertising and 65 percent, roughly, was editorial content? A. That is right; yes, sir.

Q. Can you give us any idea generally how that runs for other magazines? A. Well, we have a comparison, as shown in there.

Q. And what page is that? A. Pages 3 and 4, I believe.

Q. Take any magazine. What about the Saturday Evening Post? A. The Saturday Evening Post for the issues for the corresponding period—

Mr. Hassell: What page is that?

The Witness: Pages 3 and 4—has 50.2 percent total editorial. In other words, it is about a fifty-fifty balance.

Q. The Saturday Evening Post is half advertising? A. Yes, that is what it shows.

Q. What about Life? A. Life editorial content represents 52.1 percent of the magazine.

Q. Do you have that magazine—what is it called—Newsweek? A. Yes.

Q. How does that run? A. 43.1 percent total editorial.

Chairman Myers: What about Vogue?

The Witness: Vogue shows 49.9 percent total editorial.

Lloyd H. Hall—for Respondent—Cross.

3082 *By Mr. Bromley:*

Q. Well, now, you haven't hit any magazine that is as low in advertising as Esquire yet. A. Red book.

Q. Take Red Book. A. Red Book is 72.4 percent editorial.

Q. Red Book is 75 percent editorial and 25 or 26 percent advertising, roughly? A. Yes.

Mr. Bromley: That is all.

Cross Examination by Mr. Hassell:

3083 Q. Do you have form or stock or general classifications and apply them to every magazine?

For instance, national affairs, amusements, beauty culture, and so forth? A. Yes, we do.

Q. So this analysis of these ten issues of Esquire Magazine has all of your regular classifications, whether or not there is anything of that sort in Esquire? A. That is true.

Q. I notice here on page 3 under "Esquire," you have "Beauty, 960 lines, 1.1 percent." Then on page 10, devoted to Esquire, you show "Beauty—." A. Page 10?

Q. Page 10. You don't show any percentage on beauty. A. Page 10 is the individual report on Newsweek. Page 27 is Esquire.

Q. I beg your pardon—I see. You carry that over? A. Yes, pages 3 and 4 show main classifications and the other pages of the book are what we term our individual magazine report and they show the main classifications with further breakdowns under each.

Q. Now, this 960 lines on beauty culture in Esquire—was that advertising? A. No, editorial matter.

Q. Beauty culture for men? A. I am sorry; I don't

Lloyd H. Hall—for Respondent—Cross.

remember just exactly what that covered. I would have to check on it.

Q. Could you state in what category or classification here in this Respondent's Exhibit 46 you have included the matter in the February, 1943, issue of Esquire entitled "The Unsinkable Sailor"? A. Could I refresh my memory? I can't tell you from memory but I can tell you from the fact that I found out by calling the office and checking our market copies where that was classified. I can't tell you from memory. I can refer to a report which I have. Shall I do that?

Q. Yes, that's all right. A. Is that page 95, the story of "The Unsinkable Sailor"?

Q. Continued on page 95. It begins on page 30. A. That was put in our classification 1608 under "General Interest."

Q. General Interest? A. Yes.

Q. You have got 1608 "Unclassified Editorial Material?" A. That is true. That is general interest material which does not fall in stated classifications that we have on the report.

Q. I see here you have an item under "Cultural Interests," 1501, animals and birds and fish. A. That is true.

Q. Did you include the mermaids and Esky in that? A. I think I can say from memory that we did not.

Q. What would you include that in? A. What would we include Esky in? ●

Q. Esky Strip cartoons and textual matter. A. Those would go in our classification 1602, Humor and Cartoons.

Q. Humor and Cartoons? A. Yes.

Q. How do you classify the Varga girls under this classification? A. The Varga girls have gone under 1602 also.

Q. Do you measure the lineages on the fourth column pages the same as on the three column pages? I mean, is

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Lloyd H. Hall—for Respondent—Cross.

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the measurement the same? A. Yes, a page has a certain number of lines and it makes no difference whether it has three or four columns. Where we have to break up a page then it is done on a fractional basis, depending upon how many columns there are to the page. If there is more than one item on the page, and they fall into different classifications, we would then break up that page according to the ads.

3089

Q. Is there more lineage on the four-column page than on the three-column page? A. No. You see we are dealing not with typed lines but what is termed agate lines. It is the unit of measurement. In other words, it is calculated to be about 14 agate lines to the inch, and we use the standard page size as given by the publisher.

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Q. Now, will you look at page 30 of the February issue of the story "The Unsinkable Sailor." Look at that drawing which takes up a large part of the lower left-hand corner of that page. A. Yes.

Q. How would you measure the lineage on that page? A. I can't tell from memory, but I can tell you from practice, sir.

If this drawing or illustration bears any relationship to the text in the story then it would be included in that story. In other words, that page would be measured. If it has no relationship to the text then it would be taken out and credited to some other classification, wherever it might apply.

Q. Suppose it is impossible to tell whether it has any relationship to the text or not. A. Well, there are some things about this service of ours that can't be absolutely a hundred percent perfect, but in that instance where there might be some tie-up, we would probably include it with the story on the basis of a little spot illustration which

Lloyd H. Hall—for Respondent—Cross.

might brighten up the headlines, or include it with pieces of fiction, or whatever other articles it might illuminate.

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Q. Now, I notice, referring to that matter of "The Unsinkable Sailor," on page 95, it has boxed in, near the center, in the upper part of the page, some matter headed "Our Military Strategy Comedy Strip Department." Would you say that that would have been measured in the lineage of this article or not? A. Without having read the whole thing, I should say that it probably would be our policy to take that out.

Q. To take that out? A. In other words, this material, which is considered extraneous, even though it might be a part of an article, very frequently like magazine notices are put in an article like that, and those are taken out.

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Q. You have a way to measure the agate lineage of that whole page, and of this particular boxed-off material which you deduct from it? A. That is true. In other words, this page is divided into columns of type. Each column would be one-fourth of the lineage of the page. That little box measures two columns, and you simply estimate the depth of it and calculate it on that basis.

Mr. Bromley: And take it out?

The Witness: And take it out or classify it in whatever classification it goes.

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By Mr. Hassell:

Q. The full-page cartoons in this publication would be estimated on the same basis for lineage as you would boxed material? A. That is true of any material in the magazine that we measure. We make no differentiation between photographs as against illustrated material or text:

Lloyd H. Hall—for Respondent—Cross.

3094 Q. I notice referring back to page 27 of this exhibit you have "Home Furnishing and Management, Lines 2622—3 percent." You don't break that down as to the 1100, Home Furnishing and Management Department, under that, Appliances and Equipment, and 1121, Miscellaneous, each of which has 56 lines? A. You see we use what might be termed a decimal system. The 1100 classification is Home Furnishing and Management. Then 1110 is appliances and equipment, and in that we have 56.

3095 Q. You break it down? A. And then it goes 11, 12, 13, 14, 15, 16, and so forth, all divisions under the 1110, which is Appliances and Equipment. Now, we say that it has 56 lines in Miscellaneous, Appliances and Equipment. In other words, there were other items than electric ranges or those that were illustrated.

Q. And this would not include advertising material? A. No, it does not in any of these figures or classifications include any advertising, and that takes in either paid advertising or house advertising.

Mr. Hassell: That is all.

Mr. Bromley: That is all. Thank you.

(Witness excused.)

3096

Chairman Myers: Call the next witness.

Mr. Bromley: Mr. Allen.

Benjamin Allen—for Respondent—Direct.

BENJAMIN ALLEN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

Q. What is your name? A. Benjamin Allen.

Q. Where do you live? A. In Malvern, Pa.

Q. What is your business? A. I am with Curtis Publishing Company, Philadelphia.

Q. In what capacity? A. As director of all circulation, and vice-president of the company, and a member of the board of directors.

Q. For how long a time have you been connected with the Curtis Publishing Company? A. Twenty-two years.

Q. What are your duties as circulation manager? A. I have charge of the distribution of our own magazines. That is the magazines that we publish,—or the company,—and of certain other magazines that we distribute for other publishers, and the sale of subscriptions of certain other magazines for whom we sell subscriptions.

Q. How long has the Curtis Publishing Company been in existence, Mr. Allen? A. About 55 years.

Q. And it publishes, itself, what magazine? A. The original publication was the Ladies Home Journal, which was started by Mr. Curtis, the founder of the company. About the turn of the century he acquired the Saturday Evening Post, the oldest weekly magazine in continual circulation. As a matter of fact, it was started in 1728 by Benjamin Franklin, the first postmaster general.

In 1915 we acquired the Country Gentleman, the oldest agricultural paper in the country; and in 1938 started a juvenile magazine called Jack and Jill.

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Benjamin Allen—for Respondent—Direct.

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Q. What magazines do you distribute as distinguished from those you publish yourself and distribute? A. Well, we distribute Esquire, Coronet, and The Woman, and several other small juvenile publications.

Q. When did you commence distribution of the magazine Esquire? A. July, 1940.

Q. You have done it since that time right down to the present time? A. Yes, sir; continuously.

Q. And are doing it now? A. Yes, sir.

Q. What can you tell us about the magazine Coronet? A. Well, Coronet is a magazine that is also published by Esquire, Incorporated, the publishers of Esquire. We have been distributing that ever since the same time, June, 1940. You understand when I say "distributing," I am referring not to subscription copies but to copies distributed for resale at newsstands.

Q. You handle, then, do you, the matter of making arrangements with retail outlets, granting franchises, making contracts, and carrying out the physical distribution? A. That is right, in all cases except sales through the American News Company, which they handle directly.

Q. I understand the monthly circulation, then, which you handle for this magazine on a monthly distribution basis is about 400,000 copies? A. It averages about that; yes, sir.

Q. What is the general circulation for all of the magazines over which you exercise distribution and control? A. About 12,000,000 an issue; about 275,000,000 copies a year.

Q. Now, as circulation manager of the Curtis Publishing Company, is it also a part of your duties to read competitive magazines? A. It is a part of the duty of my department to keep posted continuously on editorial content of other magazines.

Q. Do you keep posted, yourself? A. Yes, I do.

3102

Benjamin Allen—for Respondent—Direct.

Q. About how many magazines other than your own do you keep informed of as a matter of current interest? A. Well, all the competing magazines, you might say magazines of the better class: Colliers, Woman's Home Companion, Good Housekeeping, Cosmopolitan, McCall's, Red Book, Life, Time, Newsweek. That about covers the group.

3103

Q. What can you tell us generally about the change, if any, which has occurred in the editorial content of the magazines which you have mentioned over the last 20 years?

A. Well, I would say that they have all become much broader and franker. That is especially true, I think, since the advent—or, rather, not the advent but the perfection of four-color printing which has added a lot to color work in books and illustrations which we consider to lighten up the book and have much more reader interest.

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Q. Have you tried to keep yourself abreast of the trend of public opinion with respect to this new frankness which is characterizing magazines today? A. Yes.

Q. What can you tell the Board as to whether or not you think public opinion accepts generally and approves of the frankness and forthrightness of present-day publications? A. Well, naturally, we carry on contacts with the public. We have several methods of contact, our own department contact with the public, our editorial mail, research contacts, and so on, and in my opinion it is apparent that the public is continuously accepting broader and more frank editorial treatment in the content of magazines.

3105

Q. Is there any magazine today which you know of which would not publish the words "son-of-a-bitch," for instance, about which we have had a great deal of discussion? A. Do I know of any that would not? *

Q. Yes. I don't know if you do or not. A. Yes, I think I do.

Benjamin Allen—for Respondent—Direct.

3106

Q. Would a magazine like Harper's— A. I don't think Ladies Home Journal or Woman's Home Companion would publish it.

Q. Would a magazine like Life, Time, Fortune? A. Yes, I don't think there is any doubt about it.

Q. What about a magazine like Harper's Monthly? A. I believe Harper's Monthly would. As a matter of fact, I have seen the word in print in several magazines, Time, for instance, and the New Yorker.

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Q. I asked you about Harper's because I was sitting here a minute ago and I picked up a Harper's magazine from the table and I slipped over the pages to page 317, purely by accident, of this issue which I hold in my hand, for September, 1943, and I noticed an article by Lt. Edward L. Smith of the Marine Corps, entitled "Marine, You Die." And I purely by accident found this sentence in the middle of the second column on page 317.

Would you read those three or four sentences into the record?

Mr. Hassell: I object to taking a sentence or so out of a magazine without any context, and I object to this testimony-in-general.

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Chairman Myers: What is your purpose, Mr. Bromley?

Mr. Bromley: As bearing on the validity of the charge that Esquire's publication of the word "son-of-a-bitch" is obscene, that being directly cited as obscene material.

Chairman Myers: The objection is overruled.

The Witness (Reading): "Over the radio we would hear the announcer describe the latest developments in Africa; then he would turn to the Pacific theatre

Benjamin Allen—for Respondent—Direct.

and in a mournful voice tell us that we were in grave danger, that Washington was deeply concerned about the plight of the men on Guadalcanal. The little island fortress might fall at any time. This announcement would be greeted with laughter, and some private would pipe up, 'Well, I'll be a sad son-of-a-bitch! Don't they know we got Marines on this island?'

Mr. Bromley: I ask to be marked for identification this issue of Harper's Magazine for September, 1943.

(The magazine referred to was marked for identification as Respondent's Exhibit No. 47.)

The Witness: I think particularly since the war started and a great many magazines have been publishing these true experience stories that words such as "son-of-a-bitch" have become much more generally used in magazines.

By Mr. Bromley:

Q. What about the use of such words as "fanny" and "behind"? A. I don't think you would see that quite as often as you would see words like "son-of-a-bitch," but undoubtedly they do appear.

Q. What about such a word as "prostitute"? A. Well, I think you would see "prostitute" used in quite a few articles.

Q. What about such a phrase as "bawdy house" or "sporting house"? A. Yes, I have seen that a number of times.

Q. What about the current accepted standard of publishing either drawings in black and white or color photographs of the undraped female figure? A. They have become much

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Benjamin Allen—for Respondent—Direct.

3112 more common, particularly since the advent, I think, of picture magazines.

Chairman Myers: Before we get off too far, may be you had better let Mr. Hassell see that exhibit. You have had it marked. I don't know what you are going to do with it.

Mr. Bromley: Very well.

(Exhibit No. 47 was handed to Mr. Hassell.)

3113 Mr. Bromley: Will you mark for identification the issue of Life for February 23, 1942?

(The magazine referred to was marked for identification as Respondent's Exhibit No. 48.)

By Mr. Bromley:

Q. Referring to this Exhibit No. 48, for identification, I ask you whether or not the colored picture appearing on page 64 thereof is or is not typical of the kind of illustration now currently and commonly used in current magazines, of the undraped female form? A. I would say it is.

3114 Mr. Bromley: I offer the exhibit in evidence.

Chairman Myers: What about the other exhibit? Did you offer the Harper's in evidence?

Mr. Bromley: No. I offer Exhibit No. 47, for identification, in evidence.

Chairman Myers: Any objection?

Benjamin Allen—for Respondent—Direct.

Mr. Hassell: The same objection.

Chairman Myers: Same ruling; overruled.

3115

(The magazine heretofore marked for identification "Respondent's Exhibit No. 47," was received in evidence.)

Mr. Bromley: I offer in evidence Respondent's Exhibit No. 48, for identification.

Mr. Hassell: Same objection.

Chairman Myers: Overruled.

(The magazine heretofore marked for identification "Respondent's Exhibit No. 48," was received in evidence.)

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Mr. Harding: May we have the same stipulation on that, Mr. Hassell, continuing on all of these issues?

Mr. Hassell: I don't understand the stipulation you are talking about.

Mr. Harding: The same stipulation about substituting copies.

Mr. Hassell: Yes, that's all right.

Mr. Bromley: May I have marked as Exhibit 49 for identification the issue of October 7, 1940, of Life.

3117

Mr. Cargill: Are we going to go into all of these magazines like we did the other day?

Mr. Bromley: I don't understand, Mr. Cargill, what you mean.

Mr. Cargill: Is that whole stack supposed to go in like this one on the desk?

Mr. Bromley: Yes, sir.

Benjamin Allen—for Respondent—Direct.

3118 "Chairman Myers: That is going to make a terribly big record. Do you suppose you could take some out that are typical?"

Mr. Bromley: I have cut the number down as low as I can, to about 40 illustrations. Maybe I can cut it more.

Chairman Myers: Are you offering the illustration or the entire magazine?

3119 Mr. Bromley: Of course; I would like to just offer the illustration. I have been offering the magazine on the theory that is what Mr. Hassell would want. I am calling attention to the page.

Chairman Myers: You may give us a nice winter's reading.

Mr. Hassell: I believe when we started on this the other day I withdrew a certain objection as to proof with the understanding that the entire issue of the magazine would go in.

Chairman Myers: That is right.

Mr. Hassell: And I would like to have that adhered to, if the Board is going to admit this.

Chairman Myers: All right. Then proceed.

120 Q. Is the illustration of the nude which appears at page 65 of Exhibit 49 typical of that class of illustration? A. Yes. I would say it was.

(The magazine referred to was marked for identification as Respondent's Exhibit No. 49.)

Mr. Bromley: I offer Exhibit 49, for identification, into evidence.

Mr. Hassell: Same objection.

Chairman Myers: Same ruling; overruled.

Benjamin Allen—for Respondent—Direct.

(The magazine heretofore marked for identification "Respondent's Exhibit No. 49," was received in evidence.)

Mr. Bromley: Will you mark for identification the issue of Life for July 29, 1940, please.

(The magazine referred to was marked for identification as Respondent's Exhibit No. 50.)

By Mr. Bromley:

Q. I show you the illustration in Exhibit No. 50, for identification, at pages 50 and 51, particularly the top one on 50 and the outside one on 51; and ask you whether or not those are typical examples of the type of undraped females now currently appearing in modern magazines? A. Yes.

Mr. Bromley: I offer Exhibit 50 in evidence.

Mr. Hassell: Counsel refers to undraped females—

By Mr. Bromley:

Mr. Bromley: I withdraw it—females.

Chairman Myers: Same ruling.

(The magazine heretofore marked for identification "Respondent's Exhibit No. 50," was received in evidence.)

Mr. Bromley: Will you mark for identification the issue of Life for May 6, 1940?

(The magazine referred to was marked for identification as Respondent's Exhibit No. 51.)

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3124

Mr. Bromley: And the issue of June 3, 1940.

(The magazine referred to was marked for identification as Respondent's Exhibit No. 52.)

Mr. Bromley: And I ask that the issue of June 24, 1940, be marked for identification—this is *Life*.

(The magazine referred to was marked for identification as Respondent's Exhibit No. 53.)

By Mr. Bromley:

3125

Q. In Exhibit 51, for identification, I call your attention to pages 88 and 89 and ask you whether or not those are typical examples of pictures of pin-up girls currently appearing in magazines today? **A.** Yes.

Mr. Hassell: May I see those?

Mr. Bromley: I will show them to you in a minute. They are all in one volume here.

By Mr. Bromley:

3126

Q. In Exhibit No. 52, for identification, at page 4, I call your attention to the two pictures of a mother nursing a baby and ask you whether that is a typical example of similar subject matter which sometimes appears in current magazines? **A.** Yes, sir. It could hardly be called anything else.

Q. And in Exhibit 53, for identification, I call your attention to pages 50 and 51, the four pictures with the strip teasers undressing, and ask you whether that is a fair and typical example of that type of picture in current magazines? **A.** Yes.

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Mr. Broinley: I offer all three exhibits in evidence.

3127

Mr. Hassell: Same objection.

Chairman Myers: Suppose you note it in each case. Note the same objection, same ruling, and an exception in each case. That will save time.

Mr. Hassell: Does counsel object to having the record show that these so-called pin-up girls are in black and white and not in colors?

Mr. Bromley: All right, sir.

(The magazines referred to were marked "Respondent's Exhibits Nos. 51, 52, and 53" and received in evidence.)

3128

Mr. Hassell: And that the picture on page 52 is about two and a half inches tall and a couple of inches wide in black and white. That the Margie Hart strip tease pictures in Respondent's Exhibit 53 are in black and white.

Mr. Bromley: Yes, sir.

Chairman Myers: Proceed.

Mr. Bromley: Will you mark for identification the issue of Life of April 21, 1941.

Mr. Cargill: Are these repetitions of the same thing that you are putting in or do you expect those to be comparisons of different pictures in the magazine or is this an accumulation of the same thing over and over again?

3129

Mr. Bromley: No. I have tried to select, if the Board pleases, examples of the same sort of thing which has been attacked by the Post Office Department. For example, this next one is a line drawing

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very similar to the fashion page in Esquire of the girl lying on her back with her leg up in the air and the woman painting her stockings.

Chairman Myers: "Hew to the line, Bertha; let the skirts fall where they may".

Mr. Bromley: That is right. I am trying, Mr. Cargill, to be sure I get into the record examples of each one of the complained of illustrations in Esquire and that is all I am trying to do. I am not trying to go beyond that. I would like to get enough in the record to show that this is a continuing practice and not a mere isolated instance. I mean, if Life published one naked woman I don't think that that would be very persuasive. I would like to get enough illustrations from Life to show that it is a regular practice and I would like to get enough illustrations from the Woman's Home Companion to show that it is a regular practice.

Mr. Cargill: But we have that.

Mr. Bromley: I would like to get some jokes, articles and pictures to show each one of those things.

Mr. Cargill: But we have to read all of this stuff.

Mr. Bromley: No, you don't. You look at it when it is received in evidence, and I believe that is all you will have to do with it. Maybe not, but I want to show it to you when I put it in.

(The document above referred to was marked Respondent's Exhibit No. 54 for identification.)

By Mr. Bromley:

Q. In Respondent's Exhibit 54 for identification, I show you a two-page spread, on pages 12 and 13, entitled "Speak-

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ing of pictures. This is a day in Babe's life", and ask you whether that is typical of the pen and ink illustrations of that type? A. In my opinion, yes.

3133

Mr. Bromley: I offer Exhibit 54 in evidence.

Mr. Hassell: Same objection.

Chairman Myers: The same ruling. It is admitted.

(The document heretofore marked Respondent's Exhibit No. 54 for identification was received in evidence.)

Mr. Bromley: Will you mark for identification, please, the issue of Life for June 23, 1941, and the issue of Life for June 30, 1941?

3134

(The documents above referred to were marked Respondent's Exhibits Nos. 55 and 56 for identification.)

By Mr. Bromley:

Q. I call your attention in Exhibit 55 for identification to the illustration on page 55 of the article: "New York Gets Biggest Jive Joint" and ask you whether those illustrations and photographs of disrobing females are typical of the times? A. Yes.

3135

Mr. Bromley: I offer Exhibit 55 in evidence.

Mr. Hassell: Same objection.

Chairman Myers: Same ruling. It is admitted.

(The document heretofore marked Respondent's Exhibit No. 55 for identification was received in evidence.)

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3136 *By Mr. Bromley:*

Q. In Exhibit 56 for identification I call your attention to pages 59, 60 and 61, and ask you whether those photographs of girls in bathing costumes are typical of what is currently published in magazines? A. Yes.

Mr. Bromley: I offer Exhibit 56 in evidence.

Mr. Hassell: Same objection.

Chairman Myers: Same ruling. It is admitted.

3137 (The document heretofore marked Respondent's Exhibit No. 56 for identification was received in evidence.)

Mr. Bromley: Will you mark for identification, please, the issues of Life for July 21, 1941, and August 11, 1941?

(The documents above referred to were marked Respondent's Exhibits Nos. 57 and 58 for identification.)

By Mr. Bromley:

3138

Q. In Exhibit 57 for identification I call your attention to page 55 and 56 and ask you whether that is another typical example of the photographs of girls in bathing suits? A. Yes, it is typical of that type of material.

Q. Is that true of the pictures on page 58 in that issue? A. Yes.

Q. And in Exhibit 58 for identification I call your attention to page 33 and ask you whether that is a typical example of a photograph of a movie star in an evening dress.

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or night gown? A. I don't think it is an evening dress. I think it is a night gown.

Q. I would say it is an evening dress. A. I would say it is typical.

Q. Is that cover of Exhibit 58 for identification, being a picture of a movie star in a bathing suit, a typical example of the kind of bathing suit pictures now published in large size? A. Yes.

Mr. Bromley: I offer Exhibits 57 and 58 in evidence.

Mr. Hassell: The same objection.

Chairman Myers: The same ruling. They are admitted.

3139

3140

(The documents heretofore marked Respondent's Exhibits Nos. 57 and 58 for identification were received in evidence.)

Chairman Myers: We will take a recess for ten minutes.

(Whereupon a brief recess was taken.)

Chairman Myers: Proceed, gentlemen.

3141

Mr. Bromley: Will you mark for identification, please, the issues of Life for September 1, 1941, September 22, 1941, September 29, 1941 and October 13, 1941?

(The documents above referred to were marked Respondent's Exhibits Nos. 59, 60, 61 and 62 for identification.)

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3142 *By Mr. Bromley:*

Q. In Exhibit 59 for identification, the issue of September 1, 1941, I call your attention to pages 8 and 9 which are reproductions of favorite post-cards with the Army and Navy. Is that a typical example of what is published in service papers, post-cards, or pictures? A. I would say.

Q. From Exhibit 60, I call your attention to the cover, being a picture of Brazil's top dancer. Is that a typical example of photographs widely published in current magazines? A. It is.

3143 Q. And in that Exhibit 60 for identification at page 57 I call your attention to a panel of nine pictures of Brazil's Eros Veluzia doing a Negro witch dance.

Is that typical of the pictures of bizarre dancers which are currently published in current magazines now? A. Yes.

Q. In Exhibit 61 I call your attention to pages 36 and 37 showing pictures of a soldier having his picture taken in a trick fashion, standing behind a woman's naked legs, with drawers on.

Is that a typical example of that kind of photography? A. Yes.

3144 Q. And another woman doing a split up against a hotel wall in a hotel room. Is that a typical example of photographs of that kind? A. Of that type.

Q. In Exhibit 62 I call your attention to pages 8 and 9, being examples of Peter Arno cartoons, and I ask you if those illustrations are typical? A. They are typical examples of Arno cartoons.

Q. And on page 143, is that a typical illustration? A. Yes, I would say so.

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Mr. Bromley: I offer Exhibits 59, 60, 61 and 62 in evidence.

3145

Mr. Hassell: Same objection.

Chairman Myers: Same ruling.

(The documents heretofore marked Respondent's Exhibits Nos. 59, 60, 61 and 62 for identification were received in evidence.)

Mr. Bromley: Will you mark for identification, please, the issues of Life for November 16, 1942, December 14, 1942, and December 28, 1942?

3146

(The documents above referred to were marked Respondent's Exhibits Nos. 63, 64 and 65 for identification.)

By Mr. Bromley:

Q. In Exhibit 63 for identification is the illustration appearing on pages 104 and 105 typical of the publicity which Varga girls generally are receiving in current magazines? A. Yes.

Q. And is that likewise true of page 108? A. Yes.

Q. In Exhibit 64 is the colored photograph of the strip teaser, Gypsy Rose Lee, a typical colored photograph?

3147

Mr. Hassell: At what page, counsel?

Mr. Bromley: At page 91.

The Witness: A typical photograph of an actress, yes, that type of actress.

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3148 *By Mr. Bromley:*

Q. And in Exhibit 65 for identification are these typical pictures of sailors posing with girls and pictures designed for the purpose of sending home or otherwise?

Mr. Hassell: What page?

Mr. Bromley: Pages 4 and 5.

I offer Exhibits 63, 64 and 65 in evidence.

Mr. Hassell: Do you mind having the record show that the Varga girl examples in Exhibit 63 are in black and white, counsel?

3149 Mr. Bromley: No, sir.

Mr. Hassell: Very well. Same objection.

Chairman Myers: Same ruling.

(The documents heretofore marked Respondent's Exhibits Nos. 63, 64 and 65 for identification were received in evidence.)

Mr. Bromley: Will you mark for identification, please, the issues of Life for October 19, 1942 and October 26, 1942?

3150 (The documents above referred to were marked Respondent's Exhibits Nos. 66 and 67 for identification.)

By Mr. Bromley:

Q. In Exhibit 66 for identification, I call your attention to pages 51 to 56, inclusive, being a review and description of "The Eve of St. Mark," with pictures, and ask you whether or not that is a typical review of that New York play? A. I believe it is.

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Q. In Exhibit 67 for identification I call your attention to pages 10 and 11 and ask you whether those are typical examples of colored photographs? A. They are rather unique, but I would say they are typical, yes.

3151

Mr. Bromley: I offer in evidence Exhibits 66 and 67 for identification.

Mr. Hassell: Same objection.

Chairman Myers: Same ruling.

(The documents heretofore marked Respondent's Exhibits 66 and 67 for identification were received in evidence.)

3152

Mr. Bromley: I ask that the issue of Life for January 6, 1941 be marked for identification.

(The document above referred to was marked Respondent's Exhibit No. 68 for identification.)

By Mr. Bromley:

Q. I call your attention in Exhibit 68 to pages 18 and 19 and ask you whether those photographs are typical? A. Yes.

3153

Mr. Bromley: I offer Exhibit 68 for identification in evidence.

Mr. Hassell: Same objection.

Chairman Myers: Same ruling. It is admitted.

(The document heretofore marked Respondent's Exhibit No. 68 for identification was received in evidence.)

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3154

Mr. Bromley: I ask that the issue of Life for July 27, 1942, be marked for identification.

(The document above referred to was marked Respondent's Exhibit No. 69 for identification.)

Mr. Bromley: Also the issue for August 3, 1942.

(The document above referred to was marked Respondent's Exhibit No. 70 for identification.)

Mr. Bromley: The issue for August 24, 1942.

3155

(The document above referred to was marked Respondent's Exhibit No. 71 for identification.)

By Mr. Bromley:

Q. Exhibit for identification No. 69, let me ask you whether the "Star and Garter" review and the photographs accompanying it are typical of reviews in current magazines of that play? A. Yes.

Mr. Hassell: What page?

Mr. Bromley: They appear on pages 61 to 63 inclusive.

By Mr. Bromley:

Q. And Exhibit 70 for identification, let me ask you whether the matter appearing on pages 42 to 46, inclusive, under the title of "Girls of Hollywood" are typical of that type of article? A. Yes.

Q. In Exhibit 71 let me ask you whether the illustration appearing on pages 57 and 58 in connection with an article

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on "Venezuelan Volcano" are typical of that type of material? A. Yes.

3157

Mr. Bromley: I offer Exhibits 69, 70 and 71 in evidence.

Mr. Hassell: Same objection.

Chairman Myers: Same ruling. They are admitted.

(The documents heretofore marked Respondent's Exhibits Nos. 69, 70 and 71 for identification were received in evidence.)

3158

Mr. Bromley: Will you mark for identification, please, the issue of Life for May 25, 1942?

(The document above referred to was marked Respondent's Exhibit No. 72 for identification.)

By Mr. Bromley:

Q. I call your attention in Exhibit 72 to page 18 and ask you if that is an example of the use of the Sultan type of cartoon in connection with advertising? A. Yes.

Mr. Bromley: I offer Exhibit 72 in evidence.

3159

Mr. Hassell: Same objection.

Chairman Myers: Same ruling. It is admitted.

(The document heretofore marked Respondent's Exhibit No. 72 for identification was received in evidence.)

Mr. Hassell: Do you want to have the record show that it is a black and white advertisement?

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Mr. Bromley: Yes.

Mr. Hassell: A shoe advertisement.

Mr. Bromley: Will you mark for identification the issue of *Life* for June 7, 1943.

(The document above referred to was marked Respondent's Exhibit No. 73 for identification.)

By Mr. Bromley:

Q. In connection with Exhibit 73 for identification, pages 82 to 85, inclusive, are those illustrations under the title of "Betty Grable's Legs" typical illustrations in that field?
A. Yes.

Mr. Bromley: I offer Exhibit 73 for identification in evidence.

Mr. Hassell: Same objection.

Chairman Myers: Same ruling. It is admitted.

(The document heretofore marked Respondent's Exhibit No. 73 for identification was received in evidence.)

3162

Mr. Bromley: Will you mark for identification the issue of *Life* for June 21, 1943?

(The document above referred to was marked Respondent's Exhibit No. 74 for identification.)

By Mr. Bromley:

Q. In Exhibit 74 for identification are the illustrations on pages 74 and 75 typical of the type of illustration carried

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by current magazines in relation to the show "Star and Garter"? A. Yes.

3163

Mr. Bromley: I offer Exhibit 74 for identification in evidence.

Mr. Hassell: Same objection.

Chairman Myers: Same ruling. It is admitted.

(The document heretofore marked Respondent's Exhibit No. 74 for identification was received in evidence.)

Mr. Bromley: Will you mark for identification the issue of Life for September 27, 1943?

3164

(The document above referred to was marked Respondent's Exhibit No. 75 for identification.)

By Mr. Bromley:

Q. I call your attention in Exhibit 75 for identification to the picture appearing at page 130, and ask you whether or not that is a typical photographic example of the modern woman's bathing suit? A. Yes, sir.

Mr. Bromley: I offer Exhibit 75 for identification in evidence.

3165

Mr. Hassell: It is also in black and white?

Mr. Bromley: Yes.

Mr. Hassell: You are specifying when they are in color, counsel?

Mr. Bromley: I am not, no.

Mr. Hassell: Same objection.

Chairman Myers: Objection is overruled.

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3166

(The document heretofore marked Respondent's Exhibit No. 75 for identification was received in evidence.)

Mr. Bromley: Will you mark for identification, please, an issue of Look for September 7, 1943?

(The document above referred to was marked Respondent's Exhibit No. 76 for identification.)

By Mr. Bromley:

3167

Q. I call your attention in Exhibit 76 for identification to a color photograph and ask if that is a typical example of a color photograph of a woman in a bathing suit? A. It is.

Mr. Hassell: What page?

Mr. Bromley: Page 34.

I offer Respondent's Exhibit 76 for identification in evidence.

Mr. Hassell: Same objection.

Chairman Myers: The objection is overruled.

3168

(The document heretofore marked Respondent's Exhibit No. 76 for identification was received in evidence.)

Mr. Bromley: Will you mark for identification, please, an issue of Look for June 1, 1943?

(The document above referred to was marked Respondent's Exhibit No. 77 for identification.)

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By Mr. Bromley:

3169

Q. In Exhibit 77 for identification is the photograph which appears at page 47 in connection with an article on Betty Grable, another typical example of the publication of a woman in a bathing suit? A. Yes.

Mr. Bromley: I offer Exhibit 77 for identification in evidence.

Mr. Hassell: Same objection.

Chairman Myers: The objection is overruled.

(The document heretofore marked Respondent's Exhibit No. 77 for identification was received in evidence.)

3170

Mr. Bromley: Will you mark for identification an issue of the Reader's Digest for September, 1943?

(The document above referred to was marked Respondent's Exhibit No. 78 for identification.)

By Mr. Bromley:

Q. In Exhibit 78 for identification, at page 21, I would like to ask you whether the following joke is not typical of some of the jokes published in magazines like the Reader's Digest, as follows:

"Sir James Barrie's favorite story was about the professor of biology who explained to his class the spawning of fish. 'So you see,' he concluded, 'the female fish deposits her eggs, the male fish comes along and fertilizes them, and later the little fish are hatched.'

3171

"One of the girls held up her hand. 'You mean, Professor,

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that the father and mother fish—that they—that before that nothing happens?"

"Nothing," said the Professor, "which doubtless explains the expression, "poor fish" ". A. That is typical.

Mr. Bromley: Will you mark for identification Reader's Digest for July, 1943?

(The document above referred to was marked Respondent's Exhibit No. 79 for identification.)

By Mr. Bromley:

3173

Q. In Exhibit 79 for identification at page 85 is a story entitled "A Birth Control Pioneer Among Migrants".

Have you read that article? A. No, I have not.

Mr. Bromley: I offer in evidence the article which appears on page 85 and 88 in the Reader's Digest in Respondent's Exhibit 79 for identification.

Chairman Myers: How did the witness answer that question?

Mr. Bromley: He said he hadn't read it. He hasn't done all his home work.

Mr. Hassell: Same objection.

Chairman Myers: The objection is overruled.

3174

(The document heretofore marked Respondent's Exhibit No. 79 for identification was received in evidence.)

Mr. Bromley: I ask that the issue of the American Mercury of July, 1943, be marked for identification.

Mr. Hassell: Might I interrupt in connection with

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this last Reader's Digest? Will counsel stipulate that both sides of the birth control question has been shown in the article from the Reader's Digest?

3175

Mr. Bromley: Yes, sir.

(The document above referred to was marked Respondent's Exhibit No. 80 for identification.)

Mr. Bromley: In Exhibit 80 for identification, beginning at page 17, is an article entitled "Sex Goes To Church". It goes over through page 24.

I offer in evidence the issue of the American Mercury for July, 1943. Respondent's Exhibit 80 for identification.

3176

Mr. Hassell: Same objection.

Chairman Myers: Same ruling. It is admitted:

(The document heretofore marked Respondent's Exhibit No. 80 for identification was received in evidence.)

Mr. Bromley: I desire to call the Board's attention particularly from this article to passages such as these, the introductory paragraph:

"Satisfactory physical relations between husband and wife should be encouraged by the church if the church is to play a genuine role in the life of its congregation. Such relations, unspoiled by ignorance or fear of the unwanted child, can help to build warm, effective families, and only such families can form a proper basis for a modern democratic society. To assume that the sex life of people is no concern of the church is to condemn it to ineffectuality."

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On page 18, the first whole paragraph:

"Dr. Burkhardt and I were having dinner at the Athletic Club in Columbus. I confess I was startled. Frigidity has been so long associated with Godliness in church circles that the 'frigid' phrase on a preacher's lips came as a shock.

The frigid woman or man is a menace to a democratic society", he continued. "If the church is going to promote the democratic concept, then it must be the helper and the extoller of the individual. The church must help the individual to achieve the fullest expression of both his body and his mind. The frigid person can't possibly bring any warmth to a family. I think one of humanity's greatest tragedies is the young wife who is not sexually adjusted."

And finally, on page 19, the second column in the middle:

"What about promiscuity", I asked, "aren't you afraid of it if you dispense all this sex knowledge?"

"No, I'm not," he answered. "In our pre-marital classes we teach both boys and girls to refrain from pre-marital sex relations, not because they will go to hell if they don't and not because they might have a baby, but because it is better for them if they don't. We try to show them out of human experience that life will be more satisfactory to them if they adopt certain disciplines for themselves. We tell them about human dignity and the necessity for self respect; and we tell them what effect the violation of rules has upon men and women."

Mr. Hassell: Did the witness answer whether he read the article or not?

Mr. Bromley: I didn't ask him.

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By Mr. Bromley:

3181

Q. Did you read it, Mr. Allen? A. No, I didn't.

Mr. Bromley: Will you mark for identification the American Mercury for December, 1941?

(The document above referred to was marked Respondent's Exhibit No. 81 for identification.)

Mr. Bromley: I offer in evidence Exhibit 81 for identification and call particular attention—

Chairman Myers: The witness has not testified with respect to it.

3182

By Mr. Bromley:

Q. Is this a copy of the American Mercury for December, 1941? A. Yes.

Mr. Bromley: I offer in evidence Exhibit 81 for identification, and call particular attention to the article: "Sex in the Army", pages 661 and following.

Chairman Myers: Isn't that about the third one we have had on this subject?

Mr. Bromley: It is the third one and the last one in a different magazine.

3183

Mr. Hassell: Objection.

Chairman Myers: Same ruling. It is admitted.

(The document heretofore marked Respondent's Exhibit No. 81 for identification was received in evidence.)

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3184

Mr. Bromley: Will you mark for identification the American Magazine for October 1943?

(The document above referred to was marked Respondent's Exhibit No. 82 for identification.)

By Mr. Bromley:

Q. I show you Exhibit 82 for identification and the story entitled "Death of an Image", which begins on page 31, and an illustration for which a full page color illustration appears on page 30. Have you read that story by Christopher LaFarge? **A.** I have.

Q. Can you tell us in summary form what the story is about? **A.** The story is about an artist who is married and whose wife is going to have a child. He was going into the Navy and decides to paint one last picture before he goes. He picked as his model a girl, I think described as a Hungarian girl. I am not sure of her nationality, but it goes into quite a little detail about the color of her skin.

She poses for him in the nude and his wife who is present the first time she poses immediately senses that there is some sort of a sex connection mentally between them.

It finally winds up that when the picture is finished she offers her love to the artist which he turns down, and then immediately leaves to go in the service, and she is so infuriated by the whole episode that while he is out of the studio she comes back and destroys the canvas.

Q. That is, the model does or the wife? **A.** The model.

Mr. Bromley: I offer in evidence Exhibit 82 for identification.

Mr. Hassell: Same objection.

Chairman Myers: Same ruling. It is admitted.

3185

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(The document heretofore marked Respondent's Exhibit No. 82 for identification was received in evidence.)

3187

Mr. Bromley: Will you mark for identification *Cosmopolitan* for June, 1943?

(The document above referred to was marked Respondent's Exhibit No. 83 for identification.)

By Mr. Bromley:

Q. In Exhibit 83 for identification, is the story on page 21 called "The Captain and Miss Reid", which is sub-titled a "witty, wicked story of a lady who was a chattering bore until her host hit upon a desperate remedy.", by W. Somerset Maugham. Can you tell us the plot of that story? A. Yes. The story is laid on a Dutch cargo ship carrying a single passenger who was an English woman of middle age, a maiden lady, who continually keeps the captain and the other officers in a furor because she talks too much.

3188

The doctor aboard the ship finally suggests one remedy to shut her up, and that is to send the radio operator, who is quite a youthful and handsome man, down to her cabin to, I presume, spend the night with her, which the radio operator does, at least the story gets up to the point where he is knocking at her door and she finally finds out who it is and asks what this message is which he purports to have, and he dictates this message which he has written himself, to the effect that he thinks she is very beautiful and he would like to come in, and so on, and as I recall the text it says something about she slipped off her spectacles and hid them under the pillow and said, "Come in".

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3190

The result of the whole thing is from there on back to England she keeps quiet.

Mr. Bromley: I offer in evidence Exhibit 83 for identification.

Mr. Hassell: Same objection.

Chairman Myers: Same ruling. It is admitted.

(The document heretofore marked Respondent's Exhibit No. 83 for identification was received in evidence.)

3191

Chairman Myers: How many more have you of those things, Mr. Bromley?

Mr. Bromley: What you see there.

Mr. Bromley: Will you mark for identification Newsweek for June 14, 1943.

(The magazine referred to was marked for identification as Respondent's Exhibit No. 84.)

By Mr. Bromley:

3192

Q. In Exhibit 84, for identification, at page 60 is an article entitled "Venereal Disease in London," which describes the activities of prostitutes in London, etc., a large number of them, and the danger they constitute to our soldiers.

Is that something which is openly and freely written about and published in magazines of general circulation now? A.

Yes.

Mr. Bromley: I offer Exhibit 84 in evidence.

Mr. Hassell: The same objection.

Chairman Myers: The objection is overruled.

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(The magazine referred to, heretofore marked for identification as "Respondent's Exhibit No. 84," was received in evidence.)

3193

Mr. Hassell: This article is headed "V. D. in London," isn't it, Counsel?

Mr. Bromley: Yes; and if you read it you will see what "V. D." means, venereal disease.

By Mr. Bromley:

Q. It is commonplace now in magazines such as Newsweek and Time and Life to refer to prostitution and venereal disease and describe conditions relating to both, is it not? A. Not only in that type of magazine, but in the general type of magazines.

3194

Q. And is it commonplace in magazines, even like the Ladies Home Journal, to publish illustrations in color with pieces of fiction where the nude female form is exhibited, either front or side or back? A. I think it happens occasionally in all magazines.

Q. I call attention to page 23 of the Ladies Home Journal and the full-page color painting in connection with the story "Sorrow Acre."

3195

Mr. Hassell: What issue?

Mr. Bromley: May, 1943.

By Mr. Bromley:

Q. Is that the kind of illustration that frequently appears even in such conservative magazines as the Ladies Home Journal? A. Yes.

Benjamin Allen—for Respondent—Direct.

3196

Mr. Bromley: Will you mark this issue for identification, please.

(The magazine referred to was marked for identification as Respondent's Exhibit No. 85.)

Mr. Bromley: I offer in evidence Respondent's Exhibit 85, for identification.

Mr. Hassell: Same objection.

Chairman Myers: The objection is overruled.

3197

(The magazine heretofore marked for identification "Respondent's Exhibit No. 85," was received in evidence.)

By Mr. Bromley:

Q. Is it commonplace now to publish colored photographs in magazines of general circulation such as Colliers? **A.** Yes, sir.

Q. Of nude models, partially dressed? **A.** Yes.

Mr. Hassell: What does counsel mean by "nude models, partially dressed"?

Mr. Bromley: Well, I will make it plain to you. Will you mark for identification Colliers for May 8, 1943.

(The magazine referred to was marked for identification as "Respondent's Exhibit No. 86.")

Mr. Bromley: I offer Exhibit 86, for identification, in evidence.

Benjamin Allen—for Respondent—Direct.

Mr. Hassell: Same objection.

Chairman Myers: The objection is overruled.

3199

(The magazine heretofore marked for identification "Respondent's Exhibit No. 86," was received in evidence.)

Mr. Hassell: The witness didn't answer so quickly on this one on account of Colliers being a competitor of Saturday Evening Post, did he?

By Mr. Bromley:

3200

Q. Would you say that the word "whore" was a word commonly used in magazines such as the New Yorker? A. Yes.

Q. I show you the New Yorker for March 13, 1943, at page 23, and ask you whether this is a typical illustration of the use of that word appearing in a story entitled "Sergeant Limeburner"?

At the top of page 23 it reads as follows:

"Speckled Bird managed at last to get a crap game started. A radio was playing in the sergeant's room but no one had seen him. 'His mother was an old whore,' Brown said, 'and his father was a lousy Lynx.' He used to live in a shack in Death Valley, where there ain't no trees and there ain't no water. When he was eight years old he sold his father's lousy pelt for a pint of varnish and got drunk on that and slit his mother's back up with a rusty razor." A. Is your question is that typical of the use of the word "whore"?

3201

Q. Yes. A. Yes, I would say so.

Q. I show you the New Yorker of May 15, 1943, and

Benjamin Allen—for Respondent—Direct.

3202 particularly a story "Faith at Sea," beginning at page 17 and running over to page 22. Do you recall that on pages 18 and 19 in the course of this story the word "son-of-a-bitch" is used at least five times? A. Yes, I do. It is a story about a merchant marine and the sailor became ill and was operated on at sea.

Q. And do you recall this paragraph in that story? A. There is one rather choice paragraph in there.

Q. "It ain't hardly nothing, William, a cousin of mine had this and he was operated on and three days later he slept with the nurse." A. That's the paragraph I had in mind.

3203

Mr. Bromley: Will you mark this issue of May 15, 1943, for identification.

(The magazine referred to was marked for identification as Respondent's Exhibit No. 87.)

Mr. Hassell: The New Yorker of March 13, 1943, page 23, is No. 87.

Mr. Bromley: I just read from that. I didn't have it marked.

I offer Respondent's Exhibit 87, for identification, in evidence.

Mr. Hassell: Same objection.

Chairman Myers: The objection is overruled.

(The magazine heretofore marked for identification "Respondent's Exhibit No. 87," was received in evidence.)

Mr. Bromley: Will you mark the issue of Time for April 5, 1943, for identification, please?

Benjamin Allen—for Respondent—Direct.

(The magazine referred to was marked for identification as Respondent's Exhibit No. 88.)

3205

By Mr. Bromley:

Q. In this Exhibit 88, for identification, on the pages 16 and 17 under "World Battle Fronts," in the article "Across Wadi Zigzau," does this following reference appear under the subtitle "Prisoners":

"Three more figures came through the gloom toward us. They were bending low and running, dodging a line of tracer bullets. One of them with a rifle and bayonet shoved the other two ahead of him and toward us. 'Prisoners,' he said. 'What'll I do with them?'

"'Kill them,' shouted a voice. 'I'll kill the bastards myself.'

"'No, don't do that,' said another voice, and the prisoners fell on their knees before us.

"'Feel under his testicles for hand grenades,' said somebody, 'they're tricky bastards.' A. I remember that passage distinctly."

3206

Mr. Hassell: What did the witness testify as to this?

Mr. Bromley: Just that it appeared in the magazine.

3207

Mr. Hassell: Did he say that was a typical example?

The Witness: I said I remembered it distinctly.

By Mr. Bromley:

Q. Is that a typical example of a description of things that happened in the war, published in reputable magazines

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3208

of general circulation? A. I think all magazines, particularly news magazines, are reporting things like that in a very frank manner. I know that they are.

Chairman Myers: While you are looking for the magazines, I might say that we have just been informed that Mr. Haggerty is to be sworn in as comptroller in the Postmaster General's office. How is that going to affect you? I expect it will take 15 or 20 minutes.

3209

Would you like to resume or would you like to wait until morning? I know Mr. Hassell can't get through with his cross examination this afternoon. What is your pleasure?

Mr. Hassell: I would rather go over until morning.

Mr. Bromley: I wouldn't mind resuming.

Chairman Myers: Mr. Hassell just stated that he would rather go over until morning. You have a few minutes left so let's proceed now.

Mr. Bromley: All right.

By Mr. Bromley:

3210

Q. Is it true, Mr. Allen, that today there is a wave of pictures of pin-up girls which appear in all sorts of publications? A. Very definitely.

Q. In many instances are they printed for the purpose of being clipped out of magazines or newspapers and pinned on the walls of rooms and barracks and what not? A. Without any doubt.

Q. I show you the Washington Post, "Parade," a weekly newspaper published for October, 1943, and ask you

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whether the pictures of the pin-up girls which appear on pages 8 and 9 of that newspaper in their weekly are typical of the pin-up girls which appear frequently? A. Yes.

3211

Mr. Bromley: Will you mark for identification this issue of "Parade" for October 24, 1943.

(The magazine referred to was marked for identification as Respondent's Exhibit No. 89.)

Mr. Bromley: I offer that Exhibit 89, for identification, in evidence.

Mr. Hassell: Same objection.

3212

Chairman Myers: Same⁴ ruling. It is admitted.

(The magazine heretofore marked for identification "Respondent's Exhibit No. 89," was received in evidence.)

Mr. Hassell: These pictures are black and white, aren't they, Counsel?

Mr. Bromley: Yes.

Chairman Myers: I have had a standing appointment for Saturday afternoon for some considerable time. It doesn't look as though we will get through by that, does it?

3213

Mr. Bromley: No.

Chairman Myers: Now, what shall we do about that? Do you want to run all Saturday afternoon? If you do I will have to cancel my appointment.

Mr. Bromley: I think we ought to run as long as you can conveniently do it, and then stop.

Chairman Myers: How do you feel about it?

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3214

Mr. Hassell: That would be satisfactory to me if we wouldn't go on past 5 o'clock.

Chairman Myers: No. The question is whether to cancel this appointment of mine for after 12 o'clock. I want to ask counsel about it now.

Mr. Bromley: I am willing to stay until 12:30 or just as late as you gentlemen want.

Mr. Hassell: Until 12:30 would be satisfactory.

Chairman Myers: All right. I wrote a letter about it and I haven't had an answer, and I expect to have an answer today or tomorrow. They are some people from out of town and I don't want to put them to too much trouble.

We will adjourn at this point until 9:30 tomorrow morning.

3215

(Thereupon, at 4:35 o'clock p. m., the hearing was adjourned.)

3216

HEARING OF OCTOBER 29, 1943.

3217

PROCEEDINGS RESUMED.

Chairman Myers: Proceed, gentlemen.

Mr. Bromley: Mr. Allen, will you take the stand?

BENJAMIN ALLEN, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Bromley (Continued):

3218

Q. Would you say, Mr. Allen, that the editorial policy and content of Esquire with respect to frankness and candor, differs in any substantial respect from that of magazines such as Life and Look and Time and some others which we have been looking at? A. No, I would say it does not.

Q. Have you examined the complained of material in the eleven issues for 1943 at my request? A. I have.

Q. And have you kept yourself informed about the state of public opinion with respect to the publication of material such as this? A. I have, sir.

Q. In your opinion, does any of it, either illustrative or textual, violate the standards of current morality in magazine publishing, in your opinion?

3219

Mr. Hassell: I object.

Chairman Myers: Do you want to strike the question?

Mr. Hassell: Yes, I move to strike it. I don't think this witness is qualified so far to answer such question.

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3220

Chairman Myers: I think it might be better to find out what his standards of current morality are.

By Mr. Bromley:

Q: Will you state as fully as you can what, in your opinion, are current standards of morality, insofar as the publication of illustrations and textual matter such as that complained of, in this country, are at the present time?

A. I believe, as I said previously, that the whole tendency of magazine editing has become much broader in the last 15 years. We find articles in many magazines on subjects such as this cited material in Esquire; we find in many magazines cartoons, wit, humor, along the lines cited yesterday; we find certain pictures of women in various forms of art.

These things have been accepted by the public, most certainly, as indicated by the huge increase in magazine circulation, particularly in the last five years, and any broad reading of magazines indicates and proves that the accepted tendency in editing, particularly of class publications that cater to a small audience, a sophisticated audience, has definitely accepted that sort of material.

3222

Q. What do you include in your use of the term "class magazines"? A. Well, a class magazine in the publishing business is one that caters to a certain smaller audience as compared to a mass market publication. Now, a typical example of a mass market publication would be the Saturday Evening Post or Colliers; whereas a class publication would be definitely a publication such as Vogue in the woman's group or the New Yorker or Esquire or any magazine that caters to a certain clientele, which has usually a limited field and usually a field in the higher income brackets, as it were.

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Q. Is it part of your business as circulation manager of Curtis to keep yourself informed on the current and changing state of current opinion with respect to magazine content?

3223

A. Yes, it is.

Q. Does your organization regularly make studies in order to enable you to be informed with respect to the state of public opinion? A. We do. We have a continuous reader research group that continuously checks with the public, particularly on material that we publish in our publications. Occasionally we will test other publications and that is true of magazines we compete directly with, magazines in our own line.

3224

Q. Now, having examined the complained of material in Esquire, will you tell the Board whether any part of it is indecent, obscene, lewd, lascivious or filthy? A. I do not consider it so.

Mr. Hassell: The same objection.

Chairman Myers: Overruled.

By Mr. Bromley:

Q. What did you answer? A. I do not consider it so.

Q. In your opinion, does any part of it violate current moral standards? A. No, sir.

3225

Q. In your opinion, is there any part of it which would have any corrupting effect on the morals of any class of our society? A. No, sir. I will qualify that. I don't think it is the sort of material that you would give to young children to read or use as a textbook in school, but aside from that I see nothing about it that would corrupt society.

Q. Referring to the exhibits which were introduced in evidence yesterday through you and to such magazines as

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3226

Look, New Yorker, Harpers, Ladies Home Journal, Woman's Home Companion, and others, are all of them reputable magazines in the better and higher class of periodicals?

A. They are.

Mr. Bromley: That is all.

Chairman Myers: Do you use this editorial analysis of the Lloyd H. Hall Company?

The Witness: Our company is a subscriber to that service; yes, sir.

3227

Cross Examination by Mr. Hassell:

Q. Mr. Allen, can you name me one publication which carries within its covers questionable pictures, off-color jokes, cartoons, and to some, indecent words all in one magazine like Esquire? A. You mean material similar to that that is carried?

Q. Yes. A. In any one issue of Esquire?

Q. Yes. A. I would say the New Yorker comes closest to that.

Q. You would say the New Yorker. Does that carry pictures comparable to the Varga girl pictures? A. You wouldn't find as many in one issue, probably.

Q. Do they carry— A. But certainly there have been in the New Yorker not only cartoons but photographs in color of women in various forms of attire.

Q. Have any of those issues been offered here? A. I don't recall whether any of the colored photography was in any of the issues of the New Yorker or not. We can find out by checking them back.

Q. You referred to Esquire as being a class magazine such as Vogue, and you stated other material catering to a special

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class of individuals. Did you name any others? A. I might correct that. I didn't say Esquire was a class magazine like Vogue. I said they were both class magazines but they cover an entirely different field.

Q. I understand that. A. Yes, the New Yorker is a class magazine.

Q. What class does the New Yorker cater to? A. The same sophisticated class that Esquire caters to.

Q. Does it purport to be a magazine for men only? A. I beg your pardon?

Q. Does it purport to be a magazine for men? A. Not particularly.

Q. Does the Saturday Evening Post carry stories in which the words "son-of-a-bitch", "ass", and "behind", referring to that portion of the human anatomy, are mentioned? A. No, I don't think you would find that in the Saturday Evening Post. But the Saturday Evening Post is unique rather than average in its editorial policy. The Saturday Evening Post is not an average publication by a good deal.

Q. Do you find those words in the Country Gentleman? A. I don't think you would.

Q. Why aren't those words found in the Country Gentleman if they are common every-day words that are accepted in polite and decent society? A. I think that can be explained in this way. The Country Gentleman is an agricultural publication. I don't think you would find those words in Capper's Farmer, either.

Q. The rural population would not care for those words in a publication, would it? A. I don't think the rural population of the country is particularly interested in magazines such as the New Yorker or Esquire. They are interested in agricultural publications.

3229

3230

3231

Benjamin Allen—for Respondent—Cross.

3232 Q. Will you answer the question? A. May I ask you to repeat the question?

Q. Would the rural publications such as the readers of the Country Gentleman and Capper's farm publication and other farm publications, not resent the inclusion of such words as I have mentioned in a publication? A. I would say that a certain per cent of them would resent it. I think you would find others that would not.

I don't think the average acceptance of that kind of material in the rural areas is nearly as broad as it is in the urban areas.

3233 Q. Do you say you would not give such sophisticated material as is contained in Esquire to grade school children to read? A. To what?

Q. To grade school children to read. A. I said I didn't think Esquire would be particularly good as a text book for grade school education.

Q. Why? Do you think it is too sophisticated? A. Yes.

Q. And by that you mean that it contains questionable pictures and cartoons and jokes and words? A. No, I don't think that. I think it is over the heads of a child audience. It is definitely a magazine for an older audience—just for the same reason that we wouldn't put that kind of material in our juvenile publication Jack and Jill, naturally.

3234 Q. Do you think the ordinary average grade school child would not understand what these words, referred to as filthy in this case, mean? A. I don't think the average grade school child would be interested.

Q. You don't think he or she would understand those words? A. I doubt it.

Q. You said Esquire would be over their heads. You don't think they would understand the cartoons or the Varga girl near-nude pictures? A. I think they would recognize

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them as being women with a certain amount of clothes on, but I don't think it would have any effect on them. I think it would be entirely lost.

3235

Q. Do you think that the double entendre jokes in the cartoons and in the text would be entirely lost to grade school children? A. I don't think they would even understand it.

Q. What age do you cover by grade school children, Mr. Allen? A. Oh, up to probably around fourteen.

Q. Have you any pictures that you personally selected or caused to be published showing girls partly clad? A. I did not understand that question.

3236

Q. Have you any pictures or have you personally selected or caused to be published any pictures showing girls partially clad? A. No. I have nothing to do with the formation of the editorial content.

Q. Do you place pictures of the girls in bathing suits taken in connection with or participation in swimming or other water sports in the same category as the Varga girl pictures? A. Yes. I don't see any dissimilarity.

Q. Have you ever seen any bathing suits for women as scanty as some of these Varga girl pictures? A. Yes.

Q. You have? A. Yes.

Q. Will you refer to the February Varga girl on page 98 of the January issue of Esquire. The costume that this model has on appears to be transparent, doesn't it, Mr. Allen? You can see the tint of the flesh through it? A. Yes.

3237

Q. You say you have seen a bathing costume as scanty as that? A. I have seen plenty of bathing costumes that reveal just as much as that reveals, particularly after they are wet.

Q. It revealed the color of the skin right through the bathing suit? A. Yes, sir.

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3238

Q. Now, look at the June picture. You never have seen a bathing costume as scanty as that? A. I have never seen a bathing costume that didn't have something to conceal, at least the upper part of the body. However, I will say that there isn't anything more exposed as to the girl in that picture than is exposed in lots of bathing costumes.

3239

Q. Now, look at the August Varga girl. Have you ever seen a bathing costume of that sort? A. I think the same answer that I made for February would apply to that. You often see girls on a beach with the straps of their bathing suit down; in fact there are such things, and I think there was one in one of the pictures that was submitted in evidence yesterday of strapless bathing suits.

Q. Do you have any idea how such a bathing suit as this, the August number, page 104 of the January issue, would stay up? A. No, I am not sure that it is a bathing suit.

Q. That matter is to all intents and purposes transparent, isn't it, Mr. Allen? A. Yes, but I again say it is no more transparent than a wet white bathing suit or even a black bathing suit.

Q. Now, has the Saturday Evening Post ever published a picture comparable to this August picture? A. No, I would say not.

3240

Q. Why haven't they published such pictures if they are entirely decent? A. Because of the thing I pointed out before, the Saturday Evening Post is a mass market publication. It is not edited to at all the same group that a magazine such as Esquire is edited to.

Q. You think— A. The fact that the Saturday Evening Post doesn't publish a picture like that does not indicate that there is anything obscene about it, in my opinion.

Q. You think it is entirely proper for a publication circulating generally over the United States, and going freely

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through the United States mails at a subsidized rate to carry matter of this sort? A. Yes, I think so, and isn't that the question, the subsidy one, that is rather controversial?

3241

Q. I believe so. A. I was of the opinion that it depended very much upon the bookkeeping and the application of cost.

Q. Well, the cost accounting system, I think, of the Postal Service is pretty well accepted.

However, will you refer to the Varga girl picture at page 34 of the June issue? The Saturday Evening Post wouldn't carry a picture of that sort, would it? A. I think a picture of that sort would not be of particular interest to the Saturday Evening Post audience. The Saturday Evening Post, however, in a recent issue, carried some pictures of show girls and, so far as I know, this is a picture of a ballet dancer in a practice costume.

3242

Q. But in the pictures you referred to, which appeared in the recent issue, there was nothing as revealing as in that picture, was there? A. Well, it revealed just as much leg.

Is there a copy of that Post around here, does anybody know?

Mr. Bromley: Which one was it?

The Witness: It was two or three weeks ago. The name of the article was "Big Bruisers," and it was a review of Diamond Jim Brady's night club performance.

3243

By Mr. Hassell:

Q. I recall that. You won't find anything as suggestive or revealing in that article as you found here.

Mr. Bromley: That's what you say.

The Witness: I don't think those pictures are as

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3244

revealing, as far as the girl above the waist is concerned, but I still repeat that I think, if my memory is correct, that it is just as revealing as far as the lower part of the body is concerned.

By Mr. Hassell:

Q. I would have no argument with you on that, Mr. Allen. Will you refer to the November issue of Esquire at page 38? Do you note that two-page size Varga girl picture? A. I didn't get your adjective there.

3245

Q. Do you note that two-page size Varga girl picture? A. Yes.

Q. Have you ever seen a beach costume as revealing as that? A. I don't know that I have.

Q. That costume does not conceal any part of the body of that model, does it? A. The costume does not necessarily conceal much of her, but the position conceals a good deal of her.

3246

Q. You say "doesn't necessarily conceal much of her." What part of her does the costume conceal, if any part? A. Well, of course, I can only look at that from one side. I would agree with you pretty much that it didn't conceal much, if any, part of her body, but I don't think that is necessarily the answer. The pose is the answer.

Q. Yes, the pose with the startled look on the face of the model and her attitude and her position. A. I don't see anything objectionable about her position.

Q. In so far as clothing is concerned, or covering, aside from the mules or shoes she has on, and the bow of ribbon in her hair, she is to all intents and purposes unclothed, isn't she, Mr. Allen? A. Well, she certainly has something on there.

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Q. Something that, would you say, that would add to the attractiveness of the picture rather than detract from it? A. Yes, I think it does. 3247

Q. Mr. Allen, did you see the article in the July, 1943, Harper's Magazine discussing picture magazines, by John R. Whitney and George R. Clark? I show you that article. A. Yes, I read this article. . .

Q. Does that article purport to go into the history of these picture magazines? A. It is a rather complete article on that subject.

Q. Do you subscribe generally to the statements in that article? A. Well, I don't know what statements you refer to. I read this some time ago from a very definite interest in the possibilities of picture books as possible publications, so that I wouldn't know exactly what you referred to. 3248

As I recall it, after I read this article, I was very definitely of the opinion that the picture magazines were profitable publications.

Q. I see.

Now, note this statement that is encircled in red on page 163 (handing book to witness). A. I didn't recall that particular paragraph, no.

Mr. Hassell: So that the Board may know what we are talking about, may I read it: 3249

"Sex required skill in handling. People wanted to read about it and look at it frequently, but not all the time; it could be given in large doses, but it must not be over done. How to space the doses and coax the reader along from one dose to the next was Goddard's anxious care."

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3250

By Mr. Hassell:

Q. You subscribe to that statement, Mr. Allen? A. I would be inclined to agree with that theory of publishing.

Mr. Hassell: I offer this entire article for the information of the Board.

The Witness: I will say, however, that apparently that subject has been handled pretty well, if that theory is right, by the leading magazines. That is, the leading magazines in that field, and by Esquire, and that can be pretty well proved by the fact that he says right there that the public doesn't want the dose in too large quantities or too small quantities. The average dose that is being handed out by these current magazines must be pretty near right or their circulation would not have gone up as far as it has.

Chairman Myers: Do you offer it?

Mr. Hassell: I offer it in evidence.

Chairman Myers: It is received in evidence.

(The magazine article referred to was marked "Post Office Exhibit No. 27," and received in evidence.)

3252

By Mr. Hassell:

Q. Mr. Allen, you referred to the readers of magazines as being in a sophisticated group or class. Would you think that the men and women of the armed forces are sophisticated or within this group? A. No, I wouldn't consider them so. In fact, I know that Esquire is not published particularly to the audience of service men. The service men just happen to like the thing that the audience that Esquire

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is published for seem to like, and even taking a much broader view, or field, in my opinion, pictures like the Varga girls are not resented by the public even though that part of the public is not necessarily in the audience at which Esquire is definitely aimed.

Q. You haven't really conducted any Gallup poll of the public to determine that, have you? A. Yes, we have.

Q. You have tested the public on whether or not the majority of the people of the United States want this kind of stuff? A. We have tested it on an accepted testing formula generally. That is, when I say generally I mean broadly, of course the whole United States.

Q. What was the method and formula for testing it? A. The method used was interviewing, by individuals interviewing the public at large. Those interviewers worked in cities from New York down to cities of under a thousand or towns of under a thousand.

Q. You mean interviewing people in cities from the largest size down to towns of under a hundred thousand as to whether they liked the Varga girl pictures? A. That is right. A thousand, I said, not a hundred thousand.

Q. A thousand? A. Yes.

Q. When was this done, Mr. Allen, and who financed it? A. I had it done by our research department immediately following the Post Office citing of Esquire. It was not requested by Esquire, I did it because I wanted to find out for myself whether or not the Post Office having cited this material—whether or not we were distributing something that the average American was opposed to.

Q. Who selected the persons to do the interviewing? A. I forgot to answer part of your question.

It was financed by the Curtis Publishing Company.

Q. Who selected the persons to be interviewed? A. Who selected what?

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3256

Q. The persons to be interviewed. A. That was up to the interviewers.

Q. How many interviewers did you have? A. I don't know that I can answer that from memory, but is there a copy of that survey here? I think it is in that.

(Mr. Harding hands booklet to witness.)

The Witness: Would you like me to read some of this?

By Mr. Hassell:

3257

Q. What is that? A. I say, would you like me to read some of this information as to how this was made?

Q. I would like to find out who was interviewed and who determined who should be interviewed, and how many people you had making these interviews? A. Here it is. There were 25 interviewers.

Q. Twenty-five interviewers? A. This thing—

Q. What period of time did that work of making interviews cover? A. The survey consisted of the results of 2,266 personal interviews made from October 9 to 15, 1943.

Shall I go on?

3258

Q. Those persons interviewed were in towns and cities such as you have described? A. Persons living in 85 cities and towns of the United States ranging in size from New York, the largest one, down to places as small as 75 persons. The distribution was made to parallel as nearly as possible the circulation of Esquire by the size of the community as shown by their statement to the Audit Bureau of Circulation for the first half of 1943.

Q. What section— A. All of the principal sections of the

Benjamin Allen—for Respondent—Cross.

country were covered as shown on the appended list of cities on the map.

3259

Q. What appendix is there? A. Well, I guess there is a map in here; in fact, I know there is. You probably can't see those dots from there, but they indicate the various cities here in the East, through the Middle West, and out in the South, and down on the West Coast.

Q. It goes down through the South and the Southwest and in the Mid-West and the Far West, does it? A. There is a list of them here.

Q. What type of people were interviewed? A. What is that?

3260

Q. What types of people were interviewed and how were they selected? A. Understand, I had nothing to do with this, that is why I can't answer those questions that you ask without looking them up. In other words, this was done by our research department who do this kind of work regularly for all the other departments of our company. I merely asked them to make such a test. They did all the rest of it.

What was that question again?

Q. What types of persons were interviewed? A. Here: The aim of the study was to obtain a cross-section of opinion among adults from 20 years of age, or over. Interviewers were about equally divided between men and women and distributed by age groups and made approximately to conform in the way they occur in the population. The sample was also controlled by education of the people interviewed. Employed women were interviewed in about the same ratio as they occur nationally, according to available data.

3261

Details on distribution of the sample of this poll will be found in the appendix.

As I recall it, the interviewers were 50 percent women and 50 percent men. They covered various age groups.

Benjamin Allen—for Respondent—Cross.

3262

The age groups covered were 20 to 29 in one classification, 30 to 44, and 45 years and over.

Q. Why were women included in these persons interviewed with respect to a man's magazine? A. Well, we know that a good many women read Esquire and we wanted to make sure—we thought possibly the men would accept it and the women might not.

3263

Q. Do you think the readers of Esquire are divided fifty-fifty between the women and the men? A. No, I don't believe so. I think probably the book is purchased in most cases—not in most cases—but in the majority of cases by men, but that book is probably also read by a woman.

So far as I know, there aren't many Esquires that are not read by both a husband and wife in a family.

Q. Do you think the Varga girl pictures would have the same salacious appeal to a woman as to a man?

Mr. Bromley: I object to the characterization in the question as "salacious".

Mr. Hassell: Cut out the "salacious". I accept the correction, counsel.

3264

The Witness: I can tell you that. To the question that was asked, "In your opinion are the Varga girls pictures"—and samples were shown at the time, 12 pages of the calendar—

By Mr. Hassell:

Q. Of all the Varga girl pictures, or which ones? A. The 12 pages in the calendar in the January issue.

Q. Oh, I see. They were the only ones shown? A. That is right.

Q. Were they full-sized reproductions, two page size? A.

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I think they are all reproduced in one page size, if I am not mistaken.

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Q. They are two-page? A. At any rate, whatever the size of the book—

Q. I see. They are on one page; I beg your pardon. A. The answer to that question was—

Mr. Bromley: Read the question.

The Witness: When asked the question: "Are these pictures"—meaning the Varga girls—"obscene or indecent in your opinion?", the answer from males was that 87.5 percent "No", they were not, and 12.4 said "Yes", and one-tenth of one percent didn't know.

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When it comes to women the percentage that said yes was 73.3.

Mr. Bromley: That said "yes"?

The Witness: 73.3 of the women said they were not and 87.5 per cent of the men said they were not.

By Mr. Hassell:

Q. What did the other per cent of the women say? A. 26.1 percent said they were and six-tenths of one percent didn't know.

Q. And the Varga girl pictures were the only things involved in this poll? A. That is right.

3267

Q. You didn't go into the other material in these eleven issues of Esquire? A. No.

Q. Is that broken down to show the sectional reaction by reasons of the country? A. I don't know—that is, yes. That is broken down by New England, Middle Atlantic, South, North Central and Far West.

Q. Give us the percentages of male and female in each one

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3268

of those sections, Mr. Allen. A. I am sorry, but in that break-down they aren't also separated by male and female.

Q. Take them as you have them theré, then. A. Well, in New England—these are percentages that said they were not obscene—New England 82.3 percent, Middle Atlantic 84.9 percent, South 73.9 percent, North Central 74.2 percent, and Far West 91 percent.

Q. And the difference between those percentages and 100 per cent would represent those that said they were? A. That is right, except for a very small percent, less than one percent, that wouldn't know.

3269

Q. The question was whether or not they were obscene? A. Yes. Wait, I will read it exactly:

"Specifically it was desired to find out whether the public considered these pictures obscene or indecent. Here is what they said:

"We are making a survey to determine whether people object to various types of pictures appearing in magazines. I have a set of these pictures here. Will you please look at them and give me your opinion on several questions?" The question as shown on the following page was then covered with the person interviewed. The pictures shown were the 12 Varga paintings from the January, 1943, issue of Esquire. These were taken out of the magazine and carried in a folder, as it was felt to be a more objective research technique not to have the name of the magazine influence the results in any way.

3270

"The questions were asked with regard to the collection of pictures as a set—however, the interviewers were instructed to record all cases in which the interviewee objected only to certain individual pictures, while not objecting to others in the set. It was found in tabulation that all of those giving answers were able to get their opinion on the pictures as a whole."

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Does that answer your question?

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Q: Yes, and can you give us some more information as to how, under what circumstances and conditions, the persons interviewed were selected? Were they people who were buying magazines at a newsstand, or were the calls made in the homes of Army officers? A. "Interviewing was done chiefly in homes, offices, and other business establishments. The interviewers used were women, who do this work regularly for the Research Department of the Curtis Publishing Company. They have been intensively trained in this type of work, and in most cases also do research interviewing for independent research organizations, advertising agencies and others in this field.

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"The study was conducted in the name of 'The Editors' Research Council.' This is the organization name under which all Curtis editorial research has been done. Neither Esquire nor Curtis was mentioned at any time during the interviews.

The 25 interviewers who made the survey were instructed to scatter their calls and to avoid bunching them by sections, occupations, religions, etc. They were told to interview at random in order that the best cross section possible could be obtained.

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In most cases they interviewed in suburbs or nearby towns, in addition to the place in which they lived. Visitors from other places were in a few cases also interviewed."

In other words, they might just happen to hit somebody from some place else that was in that town.

Q. All the interviewers were women, I believe you indicated? A. That is right.

Q. What period of time was consumed in making these interviews? Does that show? A. Yes. You asked me that before and I found it—between October 9 and 15th.

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3274

Chairman Myers: Do you have the average for the entire country on that question of obscenity?

The Witness: Yes.

Chairman Myers: You gave it in sections.

The Witness: Yes.

Mr. Cargill: Is that book going to be introduced as evidence?

Mr. Bromley: I hope so, now.

The Witness: This, of course, is the total for whatever break-down it would be—the total is that 80 per cent do not think they are obscene or indecent and 19.9 per cent say they are, and three-tenths of one per cent say they didn't know. They didn't have an opinion.

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Chairman Myers: Was the method you followed the same method that the Gallup poll uses?

The Witness: Substantially, yes; that is the accepted technique.

By Mr. Hassell:

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Q. You mentioned yesterday, Mr. Allen, that there is a trend in magazines today towards a more frank and outspoken manner of writing. Do you contend that this alleged trend is as evident in the Saturday Evening Post as in Esquire? A. I would say the trend has been probably as great. For instance, 15 years ago we didn't even accept cigarette ads but we do now. That is why I say when you keep talking about the Saturday Evening Post, you are talking about the exception, not the rule in the average publication. For instance, we are the only publication that does not carry liquor advertising and so when you compare any publication with

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our particular editorial formula and editorial policy you are not talking about average magazines.

3277

Q. The Saturday Evening Post does not carry advertisements such as the one called attention to in this proceeding of the Thorne Smith books, does it? A. I don't remember seeing it.

Q. You don't remember seeing the advertisement of it—
A. In the Post?

Q. I mean here. You know the advertisement I am referring to? A. Yes.

Q. You admit, do you not, Mr. Allen, that the character of the cartoons in the Saturday Evening Post are not comparable from a sexy standpoint as those in Esquire? A. Well, cartoons of that sort have never been part of the editorial content of the Post. As a matter of fact, we don't use many—I don't think we use many full page cartoons. All our cartoons are small cartoons. On the other hand, there was in this week's issue of the Saturday Evening Post a cartoon that I think was funny and I think everybody else would think was merely witty, but if you apply certain standards that had been at least discussed here you might get the idea that there was something about the cartoon that is similar to these cartoons that are cited.

3278

Q. What cartoon was that, sir? A. Well, it happened to be a soldier and a girl on a park bench with a little kid poking a flashlight at them and the little kid is saying, "I have no older sister, so I am free-lancing".

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Q. Has the Saturday Evening Post ever carried, so far as you are aware, any stories or articles like that of "The Unsinkable Sailor" or the "Court of Lost ladies"; stories like that? A. Stories like that?

Q. Yes. A. The Saturday Evening Post has carried a good many of these stories on true experiences in the war.

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3280

but that would not be exactly like that "Unsinkable Sailor". I don't think they have ever carried fiction like either one, no, not to my knowledge.

Q. Do you take the position that the so-called or alleged pin-up girl pictures referred to yesterday in your direct and the October 24, 1943, issue of "Parade" at pages 89 and following are comparable in their appeal to the Varga girl pictures? A. They would be if they were in color and not in black and white, in my opinion.

Q. Those pictures are smaller and they are not in color, are they? A. That is right.

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Q. Would you say generally that the models are more fully clothed than some of these models in the Varga girl pictures? A. Oh, some might be and some might not be. I don't remember the pictures definitely.

Q. Do you recall any of those pictures that showed models with as little or as scanty clothing on as this Varga girl model we referred to in the September issue of Esquire on page 38? A. Well, I am familiar with that but I have forgotten exactly what the others look like, except that there was a spread of them and I remember they were in black and white.

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Q. You referred to or testified, I believe, Mr. Allen, that all of this mass of material called attention to by counsel in Respondent's Exhibits 47 to 88 are typical. Did you mean typical of the magazine, for instance, Life? A. I mean typical of that field; a typical presentation of that type of material.

Q. You would say the same type of material to which attention was called in various issues of Life would be found in the American Mercury? A. No, that does not cover the same field.

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Q. Or the American Magazine? A. I think you could probably find in the American Magazine some of that material or some similar material. Naturally, they don't carry anywhere near as much. The American Magazine is primarily a magazine of fiction.

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Q. Would you say that that Life matter to which attention was called would be typical of matter found in the Cosmopolitan, Newsweek, Ladies Home Journal, Colliers and New Yorker? A. No, you can't say that because you are bringing into that list a whole lot of magazines that are not even in that field. Of course, you wouldn't see a Varga drawing in a magazine like Newsweek; it would have no place there. Newsweek is a news magazine. You can't take all these fields and say they all apply to all magazines, because magazines are very definitely edited to certain groups. All magazines are not competitive at all; they are only competitive within the field that that field covers.

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Q. I believe you stated that this poll to which you refer taken by the Curtis Publishing Company of Varga girl pictures, was similar to the Gallup poll. Isn't it a fact that the Gallup poll has proven inaccurate in its forecasts in connection with national elections and other questions? A. I think the Gallup poll has the best record on forecasting national elections of anybody.

3285

Q. But it is— A. I may be wrong on that—but I don't think so. I think I am right.

Q. But it has proven inaccurate at times, hasn't it? A. To a very, very slight degree. Would you like me to read this? They may have something in here that would throw some light on that. Well, here are several pages that are devoted to showing the technique of making surveys.

Here is a statement by Gallup, Dr. George H. Gallup in December, 1938, made the following statement:

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3286 "If the matter of securing adequate and careful cross section were the only factor to be considered, then 1500 to 2,000 interviews would give a national answer within eight percent of accuracy in 97 percent of the cases, but in measuring political opinion as we do and particularly in breaking it down into political sub-divisions, certain other factors enter."

He goes on to say that in order that his answers may be broken down by State areas, the average sample consists of about ten thousand interviews. The Esquire poll does not attempt a State break-down and only shows such a breakdown by broad geographical areas and community size, etc.

3287 An example of how accurate a small sample can be was given by Crossley, Incorporated, who do a great deal of work in opinion rating radio and marketing research.

Comparison of result of interviews with 600 families made in six carefully selected cities were comparable in result of 20,412 in 150 cities and towns. It goes on to show that base on 600 on this particular field they were questioning, which had to do with fountain pens, the result on 600 showed 90 percent of the families had fountain pens and when that study was extended to 20,412 interviews it was still 90 percent.

3288 In other words, they merely cite that to show that a small base will give the same results as a wide base if the base is properly selected and carefully broken down by geographical age groups and so on.

Q. Mr. Allen, do you contend that the standards with respect to radio broadcasting of questionable words and so forth is the same as that which in turn applies to the press or magazine? A. Well, I am not very familiar with those regulations that you mention, but I would say that there isn't very much similarity because the average person buys a

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magazine because he wants that magazine. Magazines are bought on newsstands; the news operator has very little control of the sale; he doesn't sell a magazine; the customer buys a magazine and he buys a certain magazine because he wants what is in that magazine and he knows what he is going to get pretty much before he gets it.

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Now, the radio is an entirely different medium. You have a radio in your house and the only time our radio is turned off is when I come home and turn it off, otherwise it goes continuously, and nobody has any control over what is coming over that radio.

Q. Would you say that the— A. In other words, you can buy your reading, but you have to take it on the air.

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Q. I see. What would you say with respect to moving pictures, as to the standard we are talking about? A. Well, I don't see that there is any comparison. In what way?

Q. As to carrying scenes of scantily clad women and off-color sexy jokes and cartoons, and things of that sort? A. Well, in current moving pictures today you certainly see plenty of scantily clad females.

Q. Did you see the picture "DuBarry was a Lady"? A. Yes.

Q. Did you think the Varga girls shown in that picture were comparable, as far as the scantiness of costume, with those shown in this magazine? A. Well, my recollection of that was that they were almost clothed exactly the same as they were in the pages of the calendar for 1942. I think it was 1942.

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Q. 1942, I see. That is not involved in this case. A. My recollection of "DuBarry was a Lady" is that the Varga girls that were in there were costumed to represent the 1942-calendar. I may be wrong on that, but I remember certain ones that were exactly like the calendar pages.

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Q. Do you recall any model in that picture that is comparable in scantiness of clothing to this September Varga girl we have been talking about? A. No.

Q. Now, Mr. Allen, is it your contention that if a magazine such, for instance, as the Reader's Digest, had carried an article in which there was included contraceptive information, apparently in violation of the postal statute with respect to dissemination of such information, that would justify the carrying of indecency in other magazines? A. I am afraid I don't get that question.

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Q. You recall the July, 1943, issue of Reader's Digest at page 85 to page 88, the story on birth control. Did you read that article? A. Is that the one that was submitted yesterday?

Q. Respondent's Exhibit 79. A. It is an article that has to do with birth control called "Birth Control Going into the Church," or something of that sort?

Q. I don't believe that is the one. It was "Birth Control Pioneer"—and some other part to that title. A. Oh, yes, this is about birth control, the efforts of a woman to teach birth control to the shifting population in California commonly known as the "Oakies." Is that what you refer to?

Q. Yes, Respondent's Exhibit 79.

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Mr. Bromley: That is right.

The Witness: If that article does contain information as to how to accomplish contraception, would you think that would justify the carrying of that sort of information in other magazines?

By Mr. Hassell:

Q. Yes. A. I don't think—I think this whole question of birth control and the use of the terms that apply to it

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So generally accepted by the reading public at the present time that you are apt to see birth control articles in almost any magazine.

Q. Are you familiar with the federal statute with respect to the use of the mails for dissemination of that matter?

A. No, I am not.

Q. If there were a law, a federal law, which made it a penitentiary offense to disseminate information as to how to accomplish contraception, you don't think this or any other magazine would be justified in violating it, do you?

A. No, I wouldn't say so. I don't think anybody is justified in violating any law, if there is a law.

Q. Let's refer to Respondent's Exhibit 63, the November 16, 1942, issue of Life, pages 104, 106, and 108.

Mr. Allen, I call your attention to the pictures. This is the illustrated article entitled "Varga Girls, Peruvian's Artist's Sleek Calendar Cuties Come to Life in DuBarry was a Lady."

This deals with the moving picture we talked about a while ago, doesn't it? A. Yes.

Q. Do you think these pictures shown here at pages 104, 106, and 108 are comparable in their revealing qualities to the Varga girl pictures involved in these eleven issues of Esquire? A. No, of course they are not, because in a movie the model moves. In a painting the model is right in the position in which she is painted. A model can have many less clothes and still not reveal anything, whereas a model that has to walk across a moving picture screen naturally has to have more on.

Q. And these models have a great deal more clothes on, do they not? A. And they do a great deal more walking in the picture.

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3298 Q. So you will admit the Varga girl models in the movie "DuBarry was a Lady" were much more clothed than the Varga girls involved in Esquire? A. They would have to be.

Mr. Hassell: That's all.

Redirect Examination by Mr. Bromley:

Q. Would you recognize the photograph of one of the Varga girls in "DuBarry was a Lady" if I showed it to you? A. I wouldn't recall that, no.

3299 Mr. Bromley: I offer in evidence the document entitled "Public Opinion Poll on Varga-Esquire Pictures, October, 1943, The Curtis Publishing Company."

Mr. Hassell: I object to that.

Chairman Myers: If Mr. Hassell objects I doubt if it is proper evidence. While some of its contents are in and some of the members of the Board would like to see it in, I don't think it is admissible.

Mr. Hassell: If the Board would like to have it in, I would just like to have my objection noted on the record.

Chairman Myers: I think you are entitled to have your objection sustained.

Mr. Hassell: Well, let it go in. I will withdraw my objection.

Chairman Myers: One Board member has indicated he would like to see it in, but I think your objection should be sustained.

Mr. Hassell: I want the Board to understand that

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I object to all this line of testimony and I don't want the fact that I failed to object to some matter to which this witness voluntarily referred in connection with cross-examination to affect my general position on this matter. Other than that, the matter can go in.

I don't see that it is any more valuable than other matter that we have here.

Chairman Myers: Shall it go in or shall it not?

Mr. Hassell: I say I have no objection other than as I have stated, and I don't want to withdraw that.

Chairman Myers: That's all right. Have it marked. It will be received, subject to that.

(The document referred to was marked "Respondent's Exhibit No. 90," and received in evidence.)

Mr. Bromley: I confess I don't know whether this document is in evidence or not.

Chairman Myers: I think it is. Mr. Hassell made the statement that he objected to this line of evidence all along, but he had no objection to having the Board see and examine it, so we are going to admit it subject to his objection.

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By Mr. Bromley:

Q. I take it, Mr. Allen, that if this survey had come out the other way you would have had serious question about whether your organization wished to carry the distribution of this magazine? A. You are absolutely right about that.

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3304

Q. So on your own initiative and at your own expense you caused a survey to be made in which there were presented to the sample of the public which you sampled three questions; is that right? A. That is right.

Q. And the first objective was whether the public considered these pictures to be obscene or indecent? A. Yes.

Q. And the second objective was to find out whether it was thought that the pictures would be apt to corrupt the morals of the reader? A. That is right.

Q. And the third objective was to find if people would object to having a magazine containing these pictures in the home? A. That is right.

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Q. And, as I understand it, your interviewers asked three questions. A. There is a copy of the interview right in there.

Mr. Bromley: That is the third page of the book and shows the precise questions, if the Board please, which are:

"1. Do you think these pictures are—or are not—obscene or indecent?

3306 "2. In your opinion, would these pictures be apt to corrupt the morals of the reader?

"3. Would you object to having a magazine containing these pictures in your home?"

By Mr. Bromley:

Q. Now, those are the three questions that were asked by the interviewers to the public interviewed? A. Those were the things they wanted to find out.

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Q. To find out for the benefit of your business judgment as to whether you would continue relations with our magazine or not? A. That is right.

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Q. Does this book show the breakdown in percentages as to each of the three question? A. It shows the breakdown on each of the three questions in total and by various other things such as the age groups and sections of the country and, I think also, by educational levels, some with high school education and some with college education, and so on.

Q. What I want to get first is whether or not the percentages are divided as among questions 1, 2, and 3, because you have got three different questions. A. There are three different sets of percentages.

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Q. Question 1, which was, "Do you think these pictures are, or are not, obscene or indecent?" is answered by the first sheet under the heading "Results"; isn't it? A. That is right.

Q. And that percentage is— A. I gave the record on that before.

Q. Are not obscene, 80 percent? A. That is correct.

Q. Are obscene, or indecent, 19.7 percent? A. That is right.

Q. That is the answer to Question 1.

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Now, somewhere else will be found the answer to Question No. 2. That appears four or five pages further on under the heading "Results," and that question, which was: "In your opinion, would these pictures be apt to corrupt the morals of the reader?" was answered "no," 80.8 percent, and "yes," 17.9 percent; is that right? A. That is right.

Q. The question No. 3 again is found four or five pages further on under "Results," and reads: "Would you object to having a magazine containing these pictures in your

Benjamin Allen—for Respondent—Redirect.

3310 home?" The answer is "no," 79.4 percent; yes, 20.6 percent.

Is that right? A. That is right.

Chairman Myers: That question was what?

Mr. Bromley: That question was: "Would you object to having a magazine containing these pictures in your home?" and the answer is "no" 79.4, and "yes" 20.6 percent.

By Mr. Bromley:

3311 Q. Is this the kind of a thing that your organization does regularly and frequently? A. Yes, sir.

Q. For how many years have you done it? A. Oh, we have always done it as far as our own magazine is concerned, but much more fully in the last five years.

Q. Do you think this kind of survey is an accurate representation of public opinion generally? A. Definitely.

Q. Do you feel that the technique has been so developed by men like Crossley and Gallup so that you can get a very accurate indication of the state of public opinion on almost anything so far as what is published in a magazine is concerned? A. It is a very definite technical business at the present time, and there are a great many businesses of all sorts, but particularly advertising and publishing and radio and that sort of businesses, that depend almost exclusively on polls of this sort for their reader reaction.

For instance, on our own publications we do a continuous reader survey. That goes on all the time. I mean it is not just one job this month and one job the next month. It is a continuous survey.

Q. Do you remember you published a condensed article,

Benjamin Allen—for Respondent—Redirect.

or a series of articles, by the author Robert Carse about the merchant marine and the trip he made to Russia in a convoy? A. Yes, called "We Fought Through to Murmansk."

Q. Would this poll have enabled you,—I don't know whether you did it or not,—to go out and get the public reaction to that article, as to whether they thought it was proper or whether they would have liked it or not? A. It was undoubtedly questioned in the survey.

Q. It was? A. Yes.

Q. Do you think you could get an accurate cross-section of public opinion on such a thing as that? Their reaction to that particular article, for instance? A. We do it all the time.

Q. Do you do it for the purpose of, among other things, guiding your future editorial policy? A. Oh, definitely.

Q. In connection with the questions asked you about Exhibit 79, the birth control article, do you remember a few years ago that Fortune published a long article about contraceptives? A. Yes.

Q. In which not only was there a full description of them and their use but photographs of the different types? A. Yes, sir; I recall it.

Q. This article in Exhibit 79 in the Reader's Digest, contrary to the information contained in Mr. Hassell's question, did not contain any information as to what the devices were or how they should or could be used, did it? A. No, it did not.

Q. It just described the work of a woman who went around in California among the migrant people? A. It described her efforts to better social conditions, and that is what the article covers.

Q. It describes her efforts of interviewing them in respect to better birth control methods without disclosing any of

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Benjamin Allen—for Respondent—Recross.

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the methods as to the information she gave them, and so on? A. That is right.

Q. So that if there is a statute forbidding the dissemination of information of that sort, and the use of contraceptives, that article would not violate any such statute as that, would it? A. That is right.

Mr. Bromley: Will you mark for identification an issue of Life for August 12, 1940? It contains a picture I would like to call to the Board's attention.

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(The magazine referred to was marked for identification as "Respondent's Exhibit No. 91.")

By Mr. Bromley:

Q. I call your attention to the picture on page 88 of this exhibit and ask you whether it is a typical bathing scene of men and women together? A. Yes.

Mr. Bromley: I offer the exhibit in evidence.

Mr. Hassell: The same objection.

Chairman Myers: Received.

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(The magazine heretofore marked for identification "Respondent's Exhibit No. 91," was received in evidence.)

Mr. Bromley: That is all.

Recross Examination by Mr. Hassell:

Q. You say that you made a continuous survey such as has been referred to here on all of your publications in order

Archibald M. Crossley—for Respondent—Direct.

to keep abreast of reader interest. Has such a survey been made with respect to the short stories in the Saturday Evening Post in the last year or so indicating that those stories have greatly deteriorated? A. Greatly deteriorated?

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Q. Yes, in reader interest. A. Not to my knowledge.

Q. You don't know whether any such survey has been made? A. Oh, when I say "survey," I am talking about a continual process of interviewing to find out reader interest in various or in all matters of editorial content. In other words, the short stories are being checked, the articles are being checked, the fiction is being checked.

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Mr. Hassell: That is all.

Mr. Bromley: That is all.

(Witness excused.)

Chairman Myers: We will take a short recess.

(There was a short recess taken.)

Mr. Bromley: Call Mr. Crossley.

ARCHIBALD M. CROSSLEY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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Direct Examination by Mr. Bromley:

Q. What is your name, sir? A. Archibald M. Crossley.

Q. Where do you live? A. Princeton, N. J.

Q. And your business is what? A. Crossley, Inc., marketing analysis.

Q. Your position with that company is what, Mr. Crossley? A. President and treasurer.

Archibald M. Crossley—for Respondent—Direct.

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Q. For how long has the company been in existence? A. Since the first of February, 1926.

Q. For how long have you been connected with it? A. Since then.

Q. Will you give us a word about your educational background, please? A. I graduated with the class of 1917 in Princeton, and I have been in the marketing research business for 25 years.

Q. Now, will you describe to the Board what your business is and what you do. A. Marketing research is the study of markets for goods and the means for reaching those markets. Primarily, we make those studies by means of cross-section analyses, field studies of the American people.

The work is also done by means of statistical analysis and existing data, studies of retailers, and studies of others according to special cases.

Q. Now, what have you done in the way of testing public opinion with respect to such questions as Presidential candidates? A. We have made Presidential polls in 1936 and in 1940.

Q. Now, have you published the results of these polls, not only Presidential polls but other public opinion polls? A. Yes.

Q. In what form? A. Newspapers, principally.

Q. Has the technique of testing public opinion on questions generally attained the status of a recognized science, would you say, today? A. I would say so, yes.

Q. Would you tell us a word about the organization which you have in order to put into operation these polls or tests of public opinion? A. Crossley, Inc., has a staff of representatives and interviewers throughout the United States, and, also, before the war, in Great Britain. These interviewers are trained in unbiased interviewing on all sorts

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Archibald M. Crossley—for Respondent—Direct.

of subjects, and, principally, marketing subjects, marketing and public opinion.

They run into a good many hundreds all over the country; we cover every section of the United States.

Q. Now, at my request, did you conduct a poll in connection with public opinion with respect to the twelve Varga girl pictures in the January issue of Esquire? A. Yes.

Q. Was that poll conducted, collected, and analyzed, and reported upon under your personal direction? A. Yes.

Q. Will you tell the Board in some detail just what you did in response to my request, as to what the reaction was, and what you did about it? A. We took the January issue of Esquire and taped it.

Q. Did what to it? A. Taped it, as per this sample (indicating), so that the subject of the interview was confined to the twelve Varga girls, or the so-called Varga calendar, and the interviewer in showing this turned it like this (indicating), and allowed the person being interviewed to examine each one of these and then the interview was finished, after the questioning.

Mr. Cargill: Will you speak a little louder, please.

The Witness: Now, two questions were asked. The first question was this:

"Do you consider these pictures to be obscene or of an indecent character? 'Yes' or 'No.' "

The second question was:

"Would you object to having a magazine containing these pictures in your home? 'Yes' or 'No.' "

Those twelve pictures, the calendar, were shown. This study was made as an urban opinion study. It was based on a sample of 4519. Statistically, the total results should vary less than two percentage

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points plus or minus in 997 out of 1000 such studies.

That is, I would like to emphasize that statistically there can be some greater variation in individual technique. The technique which we used was that of selective sampling or controlled sampling whereby the distribution of the interviews were controlled according to population.

For example, 37 percent of the population, according to the census, is in the eastern section. 50.9 percent of the population is in over 100,000, and so on. Now, our samples were controlled so that we had the same percentage, or approximately the same percentage, in those cases which varies within a tenth of a point as the census figures showed by geographical census, by population groups, by age groups, by sex, and, according to our own information, on living standard levels.

We used also check factors. One check factor being whether the person interviewed had a telephone, and the results compared very closely with existing information on that subject. That is the method which was used.

By Mr. Bromley:

3330

Q. Now, I wish you would explain that a little more fully to me. How many people according to Government figures or recognized figures of an authoritative nature—what percentage of our population has telephones? A. The latest information which I think is the American Telephone & Telegraph information is 44.2 percent of families have telephones throughout the United States.

Q. How would you use that as a guide in selecting the

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character of persons you would interview? A. We would use it as a check factor rather than a control. In other words, if we discovered that we had in the results that we obtained a very high percentage of telephone homes in relation to the known number of telephone homes we would assume then that our distribution was not correct in some form. It could be that it had not gone far enough down the income scale, or it could be that it had not gone down far enough out in the country.

3331

When you use check factors such as telephones, gas, electricity, and various others, and come fairly close to known data, it is assumed that you have a pretty true cross-section of the country.

3332

Q. Would you use the fact of whether or not the person interviewed had a telephone, had gas, had electricity, had a radio, all that information from the people interviewed and check it against the statistical figures of what percentage of our population had telephones, gas, electricity, and radios? A. We do that regularly.

Q. Did you do that in this study I am talking about? A. We did it in the case of telephones.

Q. What kind of cross-section, economically speaking, would you take and how would you determine that? A. By "economically," do you mean living standards?

3333

Q. Yes: A. We have taken the distribution of living standards according to our own experience over a period of years. There is no set method of determining living standards. I am a member of the Committee of American Marketing Association, to try to check such standards. We have set those standards on the basis of trial and error over a number of years, and we have come out to such percentages which we have here, for A, B, C, D, and E levels.

The "A" being the top level locally, "E" being the very

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lowest level locally, "B," "C," and "D" being the intermediate levels.

Q. Now, would the "E" level of income include the poorest class of people? A. Yes.

Q. Would the "A" level of income include the rich people? A. Yes.

Q. "B," "C," and "D" the intermediate levels, judged from the standpoint of income? A. Yes. May I add to that not only income but living standards.

Q. So that means that the character of person interviewed out of your 4,500 samples bore the same relation to 4,500 that the whole class of "E" people to this nation bore to our 130,000,000; is that right? A. Extremely close.

Q. What other test did you use to check the representativeness of the cross-section of your 4,500 samples? A. No other check than the distribution.

Q. Now, for how long a time did it take you to make this check? A. The study was conducted over a period of approximately two weeks.

Q. Are you able to give percentagewise in the same way the last witness did the result of the survey on the first question? A. In total.

3335

Mr. Hassell: I object to this whole line of testimony and move that all of it now be stricken.

Chairman Myers: Objection overruled.

By Mr. Bromley:

Q. What is the total? A. The answer to the first question, urban findings on Varga girl, the question being: "Do you consider these pictures obscene or of an indecent character?" "Yes," 22.4. "No," 77.6.

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The answer to the second question, "Would you object to having a magazine containing these pictures in your home?" "Yes," 26.4; "No," 73.6.

3337

Mr. Hassell: Seventy what?

The Witness: "No" is 73.6.

By Mr. Bromley:

Q. Have you embodied the results of this study in detail in the form of a written report? A. Yes.

Q. Have you got it there? A. Yes.

Q. May I see it? A. Yes (handing report to counsel).

3338

Q. And have you got a detailed written report showing exactly what you did, and the breakdown in all cases which you have mentioned? A. Yes. This report gives the actual numbers. The report I just handed to you gives the percentages.

Mr. Bromley: Will you mark this for identification, please? This is the black-bound volume.

(The volume referred to was marked for identification as Respondent's Exhibit No. 92.)

3339

Mr. Bromley: And will you mark for identification this white-bound report entitled "Report by Crossley, Inc., " which is a summary of the first, as I understand it.

(The volume referred to was marked for identification as Respondent's Exhibit No. 93.)

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3340

By Mr. Bromley:

Q. I show you Exhibit No. 92, for identification, and ask you whether that is a detailed written report including the copy of the questionnaire used? A. It is.

Mr. Bromley: I offer it in evidence.

Mr. Hassell: I object.

Chairman Myers: The objection is overruled; it may be received.

3341

(The volume heretofore marked for identification "Respondent's Exhibit No. 92," was received in evidence.)

By Mr. Bromley:

Q. I show you Exhibit No. 93, for identification, and ask you if that is a summarization of Exhibit 92? A. Yes.

Mr. Bromley: I offer it in evidence.

Mr. Hassell: I object.

Chairman Myers: The objection is overruled; it may be received.

3342

(The volume heretofore marked for identification "Respondent's Exhibit No. 93," was received in evidence.)

Mr. Bromley: That is all.

Mr. Hassell: May I see those documents?

Mr. Bromley: Yes (handing Exhibits 92 and 93 to counsel).

Archibald M. Crossley—for Respondent—Cross.

Cross Examination by Mr. Hassell:

3343

Q. Mr. Crossley, your poll on these two questions was conducted in urban areas only, was it? A. The original poll was conducted in urban areas. We also conducted later a poll in rural areas.

Q. Is the rural area poll shown here? A. It is shown in the summary, which is later than the other.

Q. Which one of these exhibits? A. The white one, and I think it is at the last page.

Q. That would be Respondent's Exhibit 93. Do you have reference to the last page in this Respondent's Exhibit 93, which reads, "Special Study of Farmers"? A. Yes.

Q. And to the question, "Do you consider these pictures obscene or of indecent character," the answer was "Yes," 33.4 percent, and "No," 66.6 percent. A. Yes.

Q. And to the question, "Would you object to having a magazine containing these pictures in your home?" the answer is "Yes," 35.1 percent, and "No," 64.9 percent? A. That is correct.

Q. Now, did you average those percentage figures with your totals for the urban areas? A. We have not averaged them in a report. I can give you the weighted average of the two.

You must understand that the urban study is a carefully controlled study. There has not been time to do a carefully controlled job among farmers.

The study is believed to be the same as a carefully controlled job would show within a very narrow margin. Statistically, if you put them together, they should be put on an estimated and weighted base. That I can give you.

If you put the two together you would find for question No. 1 approximately 27 percent, and question No. 2—

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Archibald M. Crossley—for Respondent—Cross.

3346

Q. Twenty-seven percent what? A. 27.2 percent answering "yes" to the first question, the first question being "Do you consider these pictures to be obscene or of an indecent character?"

The "no," of course, would be the reciprocal of that, which would be 72.8 percent.

Question No. 2, "Would you object to having a magazine containing these pictures in your home," the weighted figure would be "Yes," 30.2 and "no," 69.8.

Q. I see.

3347

Now, Mr. Crossley, are your interviewers—is that what you call the people who actually make the interviews? A. Yes.

Q. Are they women or men? A. Both.

Q. How do you select those interviewers as to education and other characteristics? A. The interviewers were originally selected from Government-trained research men and women some years ago. They have been added to, largely using these people as supervisors.

They are now of a wide variety. They cover all ages, and cover both sexes. They are a little more intelligent, naturally, than the average. They run from perhaps a low middle up to a fairly high grade.

3348

Q. As to intelligence? A. No, as to living standards.

Q. As to living standards? A. As to living standards.

Q. And do these interviewers live in the communities in which they are employed? A. Yes.

Q. For instance, if you had an interviewer in Washington wanted to make a poll here, the person who does that would live here? A. They live here, yes.

Q. And they are used in all sorts of polls, are they? A. Yes.

Q. All sorts of questions? A. Yes.

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Q. Does that apply to the small towns, too? A. Yes.

3349

Q. Take a town of 1,000 or 5,000 population where everybody knows everybody else, and the family history back for generations, maybe, the interviewer would live in that town? A. To some extent. Naturally they cover the rural areas and they have to travel. Sometimes they travel from small cities into small towns and rural areas.

Q. What technique do you instruct your interviewers to employ in soliciting information as to the approach to the person interviewed? A. They usually represent themselves as carrying on interviewing for Crossley, Inc., a national research organization. They sometimes say they are carrying on the Crossley poll.

3350

Q. Do they go up to a housewife's door and ring the bell and take her from her duties and pry the information out of her? A. Yes.

Q. The answers made might depend in some cases on some questions to just what approach the interviewer made to the person interviewed? A. Yes.

Q. The state of health of the person interviewed, the state of his or her industry at the time, whether he or she was busy on something else, would it not? A. That could be.

Q. Are your polls on elections always 100 percent true in their prognostications? A. Never.

3351

Q. You wouldn't claim this to be 100 percent true reflection of the opinion of the American people, would you? A. I couldn't possibly.

Mr. Hassell: That is all.

Chairman Myers: Do you know who is going to run against each other for President next year?

The Witness: I wish I did.

Archibald M. Crossley—for Respondent—Redirect.

3352 *Redirect Examination by Mr. Bromley:*

Q. Did you make a 1936 Presidential poll? A. Yes.

Q. And how far wrong were you? A. In 1936 we were between five and six percentage points out of the way, and in 1940 we were 1.8 percentage points out of the way.

Q. Well, did you correctly prophesy who was going to be elected each time? A. Yes.

Q. And the actual error in the total vote in 1940 was only one point something percent; is that right? A. That is right.

3353 Q. Would you do a quick one for me for 1944? A. Not publicly.

Mr. Hassell: What was that?

(Question and answer read.)

By Mr. Bromley:

Q. What about this business of possible inaccuracies in interviews because people are busy or sick? Do you take that into account? A. Well, that is averaged out because you don't find any very large number of people sick at the same time of the interval. You don't go out and carry on your interviews when every Mrs. Jones that you interview happens to be sick, so that you would probably find the same percentage of people sick as is true all over the country at a given average minute or average 15 or 20 minutes of the interview.

Q. Were you careful to instruct your interviewers as to whether your organization had any interest one way or the other as to how this thing came out? A. Yes, that is standard practice.

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Q. What instructions did you give? A. They are contained in here.

3355

Q. Exhibit 92. I notice it says:

"Instructions for conducting picture attitude study. Read carefully." That is underlined.

"Crossley, Incorporated, has absolutely no interest"—that is underlined—"in whether people think these pictures obscene, indecent, or not. You must conduct this interview so as not to bias the person being interviewed on one side or the other."

Are those instructions always given to your people and are they well aware of the fact that they must be as objective as it is possible for them to be? A. Yes, that has been drilled into them. I have personally done it all over the United States year after year in training interviewers.

3356

Q. What do you do with the fellow who looks at the pictures and says, "I think they are all right, but I don't think my wife would like them"? A. I would consider them questionable and they would go in the "Yes" rather than the "No."

Q. You would actually record them as being obscene. Is that right? A. Yes.

Q. Is it a fact that your policy is to lean over backwards and construe any doubt in the minds of the persons interviewed as an answer connoting indecency? A. That instruction was given by me personally to the men in charge of the tabulation.

3357

Q. Can you give me another type of indefinite answer which you sometimes ran into which you tabulated as against the decency of the pictures? A. In a general way only. I have no examples with me, but if a person had said, "Well, one or two of them may be, but on the whole they are all right," or something of that kind.

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3358

- Q. What would you have done with a case of that kind?
 A. In that case they would have been classed as "Yes".

Q. If a fellow said, "I think one is indecent but the rest are all right," you would tabulate that as saying all were decent? A. He would be tabulated as a "Yes" answer to this question, that the pictures are indecent.

3359

- Q. I want you to be perfectly clear about that because I can conceive of an interviewer asking an opinion on each one and added up the results would be that he thought six were decent and four indecent. You might have tabulated that as a "No" answer, but as I understand you, if any one said that any one of the 12 he thought was indecent, you put him down as answering the first question "Are these pictures obscene" as "Yes". Is that right? A. Yes, sir.

Mr. Bromley: That is all.

Mr. Hassell: That's all.

(Witness excused.)

Mr. Bromley: Mr. Lewenthal.

3360

REEVES LEWENTHAL, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

- Q. What is your name, please, sir? A. Reeves Lewenthal.
 Q. How do you spell the last name? A. L-e-w-e-n-t-h-a-l.
 Q. Where do you live, Mr. Lewenthal? A. 1165 Park Avenue, New York City.
 Q. And your business or profession is what? A. Art

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dealer, art manager; president of the Associated American Arts.

3361

Q. What is the Associated American Arts? A: Associated American Arts represents approximately three-quarters of the leading American artists.

Q. Are you an expert in art? A. I believe so, yes, sir.

Q. And for how long a time have you been connected with art in America? A. Seventeen years.

Q. Will you tell us in detail just what your artistic connections are? A. Well, I was head of public relations of the National Academy for three years; I was on the governing boards of a majority of the art societies of the country, I believe; that included the Society of American Etchers, National Association of Women Painters and Sculptors, and I was appointed to the Municipal Art Society of New York City, a member of the Board of Education group appointed by Mayor LaGuardia to preserve the arts.

3362

I was recently appointed director of the War Department Art Advisory Committee.

I believe I have been associated and am associated with just about every major art association in the country.

Q. What is the National Academy to which you referred? A. It was founded by Samuel F. B. Morse in 1826, the oldest art society in the country. It has since 1826 taken a leading part in the professional activities insofar as art in the nation is concerned.

3363

Q. Will you take the January issue of Esquire, 1943, and indicate as briefly as you can whether or not there are, in your opinion, any works of art or articles of art in that issue?

Mr. Hassell: I would like to inquire of counsel whether it is proposed to have this witness testify as

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3364

to the artistic quality of any of the Varga girl pictures. I understood they were not offered or held out as art.

Mr. Bromley: No, I had no thought of calling his attention to Varga particularly.

Mr. Hassell: I submit there is no question in this case as to the art pages of this magazine.

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Mr. Bromley: Will you stipulate, Mr. Hassell, that we regularly have features devoted to the arts, features devoted to the merit of artistic presentations, paintings, drawings, etchings, and so forth, and that a substantial amount of each issue of our magazine each month is devoted to the arts?

Mr. Hassell: I don't know that I would want to enter into a stipulation that far. I believe it is my recollection that a few pages of this magazine, most every issue, purport to be devoted to art.

That is not questioned here, as I understand.

Mr. Bromley: I don't like you to use the words "purport to be devoted to art". I want to prove they are devoted to art. There is no purporting about it.

Mr. Hassell: I object.

Chairman Myers: Overruled.

3366

The Witness: Yes. The Covarrubias America undoubtedly represents the highest in decorative art.

Mr. Hassell: Will you identify the passages as you go along, Mr. Lewenthal?

The Witness: It is opposite page 46.

Mr. Hassell: That is the January issue?

The Witness: That is the January issue, yes, sir.

The Covarrubias America undoubtedly represents the highest achievement in decorative map publishing. The artist, Covarrubias, is recognized as having per-

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fected this particular art to the highest degree ever known.

As a matter of fact, this particular map has been acquired by the State Department and has been sent to, I believe, every American Embassy, and is generally, although it appeared in Esquire for the first time, very well known today.

It is also used as an educational feature in schools throughout the country, it has been acquired by the Metropolitan Museum, the Museum of Modern Arts, and many other museums throughout the country.

I would like to ask one question. Primarily, after all, there are three categories of art. There is commercial art, applied art, and fine art, and I am not quite sure; I presume it is fine art that you are talking about?

By Mr. Bromley:

Q. Yes. A. The illustration on page 70 for the article "61 Shopping Days til Love" are excellently done and certainly would be acceptable to any gallery for exhibition purposes. They are by Baer.

The illustration opposite page 74—I don't know this man Pachner—is well executed by every standard and can be considered in the classification of fine art.

The illustration preceding page 77, by Leydenfrost, definitely shows a high degree of accomplishment, technical competency.

Q. Is that in connection with the article: "The Future of Air Power"? A. Yes, sir; it is.

Q. Who is Leydenfrost? A. Well, Leydenfrost is considered a top ranking man in the commercial art field. Of

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3370

course, the old print opposite page 84 "First Nights and Passing Judgments", is certainly acceptable more from a historical standpoint and competency of that day than a contemporary thing.

The photograph opposite page 89 is photographically one that has a high degree of accomplishment. I don't know who the artist is on page 111, where there is an illustration in black and white which is excellent. The artist's name is not listed.

On page 114, obviously by the same artist, there appears another illustration which certainly can be characterized as fine art.

3371

The same thing applies to the illustration by the same artist on page 116.

The illustration by Walter Bohl is definitely a thing of some accomplishment.

The photograph of the bull-dog, Champion Jackmins Ferdinand, opposite page 119, certainly, from lighting and general photographic standards, can be considered excellent.

Q. Who is Henry Waxman, the photographer? A. He is one of the leading color photographers of this country.

Of course, the chart on page 121 which has the key to the map of America by Covarrubias is certainly a unique representation of art.

3372

I believe that covers that.

Q. Now, take the February issue and do the same thing. A. All right, sir. From the very broad viewpoint, the illustration opposite page 30, I don't know who the artist is, and this is a fashion illustration, is most competent and well-executed.

Of course, the illustrations on page 48 picturing the Gibson Girl is very definitely of a historic value and shows the technique that was highly thought of in its day and which

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I am sure for many years will be constantly referred to in
the history of art in this country.

The painting on page 55, by Pachner, is again a very
competent example of fine art.

Mr. Hassell: 55, you mean opposite 54?

The Witness: Yes, sir.

The photograph opposite page 56, the painting,
rather, by Leydenfrost.

Mr. Hassell: It is opposite page 57?

The Witness: Yes, preceding page 57.

This again shows a high degree of professional
competency.

The drawing by Eric Lundgren on pages 60 and
61 would be acceptable to any museum, acceptable
as contemporary Americana.

The illustrations on pages 76 and 77 are excellent
and would be acceptable for showing in any modern
gallery.

By Mr. Bromley:

Q. Just a moment. Those are the illustrations in connection with the story— A. "Home Sweet Ruby Street".

Chairman Myers: What page is that?

The Witness: 76 and 77.

By Mr. Bromley:

Q. Who is the artist who made those illustrations? A. Baer. Now, Baer was a discovery of Esquire and his work first appeared in Esquire and he today is highly thought of.

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3376 His paintings hang in a number of museums. The Associated American Artists thought enough of his work to give him a one-man show, which was very well acclaimed by the critics, and today he is widely sought after to do work of a highly fine art nature.

Q. What kind of an illustration is this? Is it an etching or drawing or what? A. It is a pencil drawing and it has been tinted on a tint block on yellow, I think it is.

The photographic illustration opposite page 80 by Henry Waxman is highly competent.

The photographic illustration preceding page 83 of the movie star Linda Darnell shows a high degree of competence.

Q. Now, who is the photographer of that? A. Hurrell, who is one of the leading photographers in the country.

Q. Is he in a class with Waxman? A. Yes, sir. I would say he certainly is.

Q. Would you say he and Waxman were two of the half dozen finest art photographers in the country? A. Yes, I would certainly say so.

The color photograph opposite page 102 by Paul Garrison is excellent. I don't know whether—I don't know him very well. I have seen a few of his things.

The painting preceding page 105 by Walter Bohl is competent.

3378 I guess that covers this one.

Chairman Myers: At this time we will adjourn until one-thirty.

(Whereupon, at 12 o'clock noon, an adjournment was taken until 1:30 o'clock p. m.)

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AFTERNOON SESSION.

3379

(The hearing was resumed, pursuant to the adjournment, at 1:30 o'clock p. m.)

Chairman Myers: Proceed, gentlemen.

REEVES LEWENTHAL, resumed the stand and testified further as follows:

Direct Examination by Mr. Bromley (Continued):

3380

Q. I show you the March issue. Will you make comments on the art content of that issue, please? A. Facing page 32 is a commercial art work which I think is a very acceptable thing, a high degree of merit—it is by Pachner—who obviously can turn in a good many directions and on page 38 Pachner again with a pen and ink line drawing which I would certainly classify as a perfectly acceptable piece of fine art.

Q. Is that in connection with the fiction by Giffen entitled "These Four Virtues"? A. Yes, it is, and Pachner again on page 41, opposite page 40, a highly competent piece of work. That is in connection with "Lookout for torpedo tracks"—I don't know whether it is related to that or not.

And on page 42 Leydenfrost again has a piece that is highly competent; on pages 44 and 45 I don't see the name but I recognize it as Howard Baer, and there are three illustrations. They are highly competent.

Opposite page 58 is a color photograph by Hurrell which has his usual degree of competency, and the same applies to the Waxman photograph on page 60.

On page 64 and page 65, I don't see the artist's name here.

3381

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3382

but it looks like Palazzo to me, a highly competent piece of work—yes, here it is, Tony Palazzo.

On page 72, a series of four reproductions which are certainly acceptable. I see they come from Knoedler's and are certainly acceptable in any magazine in the country.

Q. What is Knoedler's? A. Knoedler's is one of the leading art galleries in the country. They loan paintings as do other galleries, to Esquire.

On pages 76 and 77, in connection with an article entitled "The Chosen Conquerors"—I don't know the identity, but there are two quite beautiful line drawings.

3383

Opposite page 80 there is a photograph by Paul Garrison, which is a very able piece of work, and on the next page there is another Bohl painting which has his usual competency.

I don't know the artist, but on page 87, it looks like a wood-cut, very able.

Now, on page 103 and page 104 also there are a group of illustrations by Vertes. Vertes is certainly one of the outstanding fashion artists of our day, but it is rather interesting that he not only may economically turn to one field, but is highly acceptable in other fields as well. Recently he had an exhibition in the Gallery of Modern Art in New York which received fine critical acclaim.

3384

I think the French artists have very much gone along in the tradition of the old masters insofar as viewpoint is concerned. I would particularly like to talk about Vertes because a short time ago I recommended him to the Steuben people who were getting up a series of lasts that they wanted represented by the outstanding artists of the world—not necessarily American—Vertes as well as Picasso and Doran, and others did them and his was a well thought of piece of work.

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He is both an easel painter as well as a fashion artist. He moves back in the tradition of the early 15th century masters such as Michelangelo, Da Vinci, and others who were primarily master artists, and it made no difference to them whether they designed a stair well or laid out a road.

3385

Michelangelo never fancied himself as an artist but when Pope Julius asked him to do the ceiling of the Sistine Chapel he protested but did it very well.

I think the tendency of today of contemporary artists is very definitely to turn to certain sources and add a certain perfection to a creation of their own in order to gain an economic sustenance, and to turn to the purely creative thing or purely serious product for easel painting, and I think Vertes is certainly one of those men.

3386

Q. Will you take the April issue, please, in the same way?
 A. Well, the double-page spread opposite page 34 is another fashion illustrative group which I think reaches a very high degree of competency.

Leydenfrost is again on page 44. My best comment applies to him.

Now, here is Baer again on pages 54 and 55 with illustrations that are certainly capable draftsmanship.

The photograph opposite page 56 is very well done by Hurrell.

3387

The dog on page 58 by Waxman is excellent.

I don't know who the artist is on page 60 and page 61. It appears to me to be Baer, I am not sure. There is no signature; but they are very highly competent.

Here are the easel paintings by Vertes on page 66 with an article by Harry Salpeter who was the art critic of the World for some time and is now one of the leading accepted art critics. Vertes is shown purely as a studio painter; highly creative, well done thing.

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3388

Page 71 I would very definitely classify as a very able rendition.

The photograph on page 72, the color and the composition and everything is very fine.

The fashion illustrations by Vertes on pages 85 and 86 are certainly creative products.

Q. Now, take the issue for May. A. On pages 32 and 33 in connection with an article called "The Savage Beast In Us", by Paul Gallico, there are six illustrations. Contemporary artists have always found a great deal of material in the burlesque and in the theatre and I think these are very well done. They are by Baer. I don't see his signature, but I recognize his work.

Fashion illustration opposite page 34. As fashion illustrations those illustrations are excellent.

Pages 52 and 53, Baer again, I am sure. They are very competent, good drawings.

Photograph opposite page 54 by Henry Waxman. This definitely can be classified as a high achievement in photography. As a matter of fact, it has beautiful texture and everything. The same applies in the photograph preceding page 57. As a matter of fact, that is a very fine example of picture texture and quality in photography.

3390

Of course, on pages 58 and 59, Eric Lundgren, beautifully done pen and ink drawings, and they certainly would be acceptable in any exhibit and in any museum.

The painting by Leydenfrost opposite page 60 is competent.

The photograph preceding page 69 looks like a Ritter photograph. It is very good. He achieves a little different thing than Waxman does, or Hurrell. He looks more for the hardness in the line and so forth.

We have Vertes again on pages 82 and 83. He always does a very competent fashion job.

Reeves Leventhal—for Respondent—Direct.

On page 84 there are a series of reproductions of paintings by Arthur Kaufmann. These paintings would certainly be acceptable. As a matter of fact, the paintings that Esquire has brought out month after month, since the suspension of *Vanity Fair*, have really carried on where *Vanity Fair* left off in presenting a fairly progressive character of art. These paintings, I am sure, would be acceptable in any contemporary museum in the country.

3391

Page 92 has a photograph which is well done from lighting, composition, and so forth.

That is all.

Q. Now, the June issue, please. A. The fashion illustrations by Pachner, I believe. Yes. Competent.

3392

Q. What page? A. It is opposite page 30.

The illustrations on pages 36 and 37, no signature, but they are Howard Baer, I know, are excellent.

The photograph by Hurrell following page 50, certainly well done from the standpoint of lighting and texture.

The same applies to Waxman's photograph preceding page 53.

On page 57 Leydenfrost's painting shows a high degree of illustrative value.

The photograph on—I don't see any page number here—it precedes the illustration opposite page 65—done by Jon Abbot. It is very good, color value, composition.

3393

The fashion illustration, I assume it is a fashion illustration, opposite page 65. Competent.

I think the art of caricature is well regarded in the illustrations following page 68.

I think the photograph on page 72 is interesting. It shows almost a degree of composition.

The paintings on page 78 are very good. As a matter of fact, I think Esquire is presenting them for the first

Reeves Lewenthal—for Respondent—Direct.

3394

time here. I think Esquire has also in the past presented many men that have been given their first opportunity by the magazine, either Esquire or Coronet, or, of course, Verve, which I think was sired by Esquire.

Q. Now, the July issue. A. The John Falter painting technically is—

Q. What page? A. I don't see any page number here. Preceding the Falter painting is a portrait sketch and an illustration by Eric Lundgren on pages 32 and 33. They are very swell.

3395

Then following that page there is a double-page spread by John Falter called "The Submarine Appendectomy" and while it is highly illustrative, it is very competent; very able piece of work.

On pages 40 and 41 there are two photographs by Tony Palazzo—line drawings, they are very good.

Opposite page 47 there is a fashion drawing by Pachner which is unusual.

3396

The photograph opposite page 50 by Hurrell is very able, well lighted. I think this photograph opposite page 52 is one of the very best I have ever seen. That and another one, I don't know what issue in Esquire it appeared, they were clipped by us because we felt they came closest to painting that we had ever seen. We generally distributed this particular photograph.

Q. What do you mean, you generally distributed this particular photograph? A. Well, we often clip things that might be helpful and stimulate our own men insofar as texture is concerned. That was clipped and we sent them around with our own comment and we hoped that they might stimulate them to certain directions. That is our own roster of artists.

Reeves Lewenthal—for Respondent—Direct.

The illustration by Leydenfrost, as illustrations go, is very good.

3397

Q. What page? A. Following page 56.

Photograph preceding page 61 is excellent.

The photograph following page 72 shows considerable originality and quite good.

The photograph preceding page 77, Jon Abbot, is an excellent photograph. There again the dog preceding page 85 is done with Waxman's usual competency.

Q. Now, the August issue. A. On pages 30 and 31, no artist is specified, but I believe it is Baer. Very, very swell competence.

John Falter's illustration in connection with the article "Bombardier's Last Breath".

3398

Q. About pages 36 and 37. A. It is extremely competent.

The illustrations on pages 42 and 43 by Eric Lundgren would find a place in any collection, that is, contemporary collection.

The caricature on page 57 is very well done.

The Hurrell photograph following page 62 is well executed, I think from a lighting and compositional standpoint, and the photograph by Hurrell on page 64 is very good.

I think the photograph on page 73 shows a high degree of artistry, and I think the composition and lighting and general concept is excellent. It has fine texture.

3399

I presume this is Leydenfrost—although I do not see his name here—there is no page number again, but it would be page 74—is highly competent.

The informal photograph—there is no page number here, but it is Serebrykoff—I guess it is—as an informal color shot it is very good.

Q. It is ahead of page 81, two or three pages ahead, two girls with the blue hats? A. The photograph, no page num-

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3400

ber here, but it is a William Ritter photograph, and has a very realistic approach, and it is fine.

Q. Just ahead of page 81. A. On page 81 we have four paintings by Kopf, loaned by the Seligman Galleries in New York, that are beautifully done, and very definitely could be classed as museum things.

The fashion illustration—I believe it is Pachner—I recognize it as Pachner, although there is no name—on page 92, is very well done.

Q. I would like to call your attention specifically to page 127 in the August issue, because that is an illustration which is under attack in this proceeding. Who are those drawings done by? A. I recognize it as Vertes.

Q. By Vertes? A. Yes.

Q. And are those fashion illustrations of the type which you have mentioned heretofore? A. Very definitely. He has formed a niche for himself in this particular field.

Q. What can you say about the quality of those particular fashion drawings appearing on those two pages? A. In concept and rendition, fine, excellent. They are very original and very fine.

Q. Now, will you go to September? A. The illustration on page 31 in connection with the article "The Sergeant's Reprimand," is very competent, a very free sort of thing, very good. There is no page number but the Falter painting, the usual Falter thing with a high degree of competency and realistic approach.

The pen-and-ink drawings on pages 40 and 41 were splendidly done. The one on page 41 is a specially beautiful piece of work.

The photograph by Bruehl on page 51 is, from a color sense, very exciting, a very swell photograph.

The photograph preceding page 53 has fine textual quality and lighting.

3401

3402

Reeves Lewenthal—for Respondent—Direct.

At what would be page 58 is a photograph by Serebrykoff, very realistic. Obviously the candid camera type of shot, which is very well done.

3403

The illustration by Leydenfrost, preceding page 61, is competent.

The fashion illustration by Saalburg—I recognize it as Saalburg, on page 76, is in the fashion field very fine.

Q. Now, the October number. A. The double page reproduction of a painting by Falter—again no page number, but it would be pages 41 and 42—is realistically done. It is highly competent.

The color photograph by Hurrell following page 56 has merit.

3404

② The photograph of the ballet girls on page 58 is quite beautiful. From the standpoint of lighting and texture it is, I think, outstanding.

A photograph by Waxman following page 70 is very good.

The photograph preceding page 75 is excellent.

The four reproductions of paintings by Henry Major opposite page 83 are fine. They would be acceptable in any museum.

The color photograph at page 87 has a beautiful textual quality. That is by Serebrykoff again.

The Leydenfrost illustration following that page has his usual merit. It is his usual thing, which is excellent.

3405

The fashion illustration by—I think that is Pachner—it looks like Pachner to me—there is no signature—is very good.

Q. Now, November. A. The reproduction of the painting by John Falter—no page number, but a double-page spread—called "The Temptation of a Hero" is well done.

Q. It is about page 44. A. It is opposite the article, "The Man Who Didn't Shoot."

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3406

I think the group of etchings on page 57 represent competent work.

The Hurrell photograph on page 59 could be classified as very able technically.

The photograph preceding page 61 is very excellently done, beautiful in so far as color is concerned. It is really quite a remarkable thing.

Q. Who is the photographer? A. Anton Bruehl.

Q. What can you say about him? A. Certainly one of the best in the country, if not in the world.

3407

The photograph by Henry Waxman following page 72, from a painter's standpoint—it is very hard for a painter to get excited about photography, but this one is very well done, beautifully done. I doubt whether any artist could ever take exception to this photograph. As a matter of fact, I happened to show this one to Thomas Benton, who made the statement that he would not be able to get texture like that, painted like that.

3408

Q. Has the draping and the folds—what seems to me to be folds and wrinkles in the yellow drape—anything to do with contributing to the beauty of the photograph? A. There would be no photograph without it; I mean, no excellency of the photographer involved. The exciting thing about it is the fact that the photographer has been able to achieve a very fine textural quality by wetting this drapery and highlighting it—it looks to me like from above and from the left—and was able to do a photograph which is quite an artistic piece of work.

The realistic photograph by Ritter, page 75, is very good. highlight and shadows and so forth.

The photograph following page 88 is very competent. That is by Serebrykoff.

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Q. Would you say in summary, then, that in each one of these eleven issues there has been a substantial art content of high value? A. I definitely would, sir.

3409

Mr. Bromley: That is all.

Mr. Hassell: No questions.

(Witness excused.)

HENRY L. MENCKEN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

3410

Direct Examination by Mr. Bromley:

Q. You are Henry L. Mencken, are you, sir? A. Yes, sir.

Q. And you live in Baltimore? A. Yes, sir.

Q. At the present time what are you doing, Mr. Mencken? A. I am writing a book and I am also doing a few magazine articles and I am a director in the corporation, the Baltimore Sunpapers.

Q. I see.

What is the work upon which you are presently engaged?

A. It is a supplement to an old book of mine called "The American Language."

3411

Q. What does it deal with? A. With the common speech of the United States, just as the original book did.

Q. When did the original book come out? A. The first edition was in 1919.

Q. How many editions have there been since then? A. It is now in about the fifth or sixth printing of the fourth edition.

Q. Can you tell us something about its content and your purpose in writing it? A. The original purpose of the

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book was to study the American form of the English language in all its branches including spelling, pronunciation, history, proper names.

I began working on this book in 1910 and I gradually accumulated a rather large amount of material. My first edition came out in 1919 and it has been in print ever since with constantly increasing size, and the book has now become so large it is impossible to put any more material in it and I am bringing out a supplement of about the same size, which I hope to bring out in about a year.

3413

The book has circulated so far something about 200,000 copies. It has been republished in England and translated into German.

Q. Now, that book is called "The American Language," isn't it? A. Yes, sir.

Q. Does it contain slang words in current use? A. Some. It does not pretend to be a lexicon. It discusses words rather as types rather than making an effort to list them all. But it discusses, for instance, among other things, a chapter on euphemisms, forbidden words, words that are, for one reason or another, not used, dialectical forms, and various kinds of slang and trade jargons, and such things.

3414

It also contains sections on the non-English languages in America, such as Louisiana French, Pennsylvania German, and so on, Yiddish in New York.

Q. We have been interested here for some time in the category you have mentioned as forbidden words, and I would like to ask you a little something about forbidden words. A. Yes.

Q. In the January issue of Esquire, page 123, there is a column in a two-page spread entitled "Ad libbing with Esquire", which is of a humorous nature and which begins "Dear Doctor Diddle". A. Yes, I have read it. I am familiar with it.

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Q. Well, is the word "diddle" a forbidden word? A. No, sir.

3415

Q. What can you tell us about it? A. The word "diddle" is a very old word in English. It is hardly vulgar English even. It is rather respectable. It means primarily to rook, to swindle, to overcome, to get the better of, and it has four or five derivative meanings, one of which is vulgar, but is rather a rare meaning, and there is a considerable difference of opinion as to what this vulgar meaning means. It means different things to different people. It is not used much and the most familiar form is, of course, the word "I diddled him out of three dollars", which is a very common form of the word both in England and in the United States.

3416

There are several other forms, figurative forms, that take on the general meaning of "to shake", suggesting the words, "shake down". That is all I know about it.

Q. Would you hesitate to use it in any work of yours on the grounds that it was indecent or obscene? A. Hesitate?

Q. Yes. A. Why, I have done it in recent times. I shouldn't do it frequently, but it has a proper meaning and it is a proper word. There is an obscene significance to it, but I don't use it in that significance, and anybody that chose to read it into it was very free to do it. There are a great many words in England and in America that in themselves are proper words that have an obscene significance in the minds of people to whom they have an obscene significance, and I don't want in any way to avoid using them merely on the ground that some lascivious person might look on them as dirty.

3417

For instance, the word "juke" isn't improper, is an example.

Q. Juke? A. Juke is used in newspapers every day. It is a perfectly proper word which has unquestionably in some

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minds an obscene significance, not my own. I never use it; I just don't happen to write anything about jukes.

Q. Now, in the February issue at page 95 there is a story called "The Unsinkable Sailor" on that page, in the middle of the left-hand column in describing what Showboat Quinn said at a union meeting we find this sentence: "I grabbed a piece of the broken glass and I yelled 'The first sonovabitch that moves I'll cut his head off.' They left the room—but I went to the hospital".

Now, what can you say about the obscenity of the use of the word "son-of-a-bitch" as it is spelled there or as it is used there? A. You mean obscenity?

3419

Q. The obscenity of it. A. There is no conceivable obscenity in son-of-a-bitch. It has no relation to sex whatsoever, I can say, not to a normal mind. Son-of-a-bitch is simply an opprobrious word indicating that the man is a son of a bitch. It is as old in English, I believe, at least as the word is. I have used it in my last book two or three times, quoting people, and I may add for your information, if it is interesting, that that book in which it is quoted rather freely has just been republished by the Army and Navy jointly with 50,000 copies to send to the soldiers and sailors, from which I get no royalty. I do get a royalty. I get a half a cent a copy.

3420

I was delighted to have it done and was very much flattered to think that the Army and Navy between them thought that this book was amusing to the soldiers and sailors, but this word was used in the book several times, but it applies only to the people who use it. I don't use it very often because I have several words which seem to me even more opprobrious.

Is that the only complaint there, "sonovabitch"?

Q. That is the only complaint in that paragraph. A.

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Well, that complaint is so fantastic that I must confess frankly I don't know how to answer it. If I were asked to answer the complaint I shouldn't do it. You might as well complain about the word "backside".

Q. I am going to come to that in a minute. There is another complaint in this same column of the story that occurs in the first whole paragraph up above in describing what Showboat Quinn, the sailor, had done in his life.

The author says: "In Las Palmas he went to work as a sort of contact man for an establishment known as The Black Cat, and the less said about that phase of his life, the better".

Now, what can you say about the obscenity or lack of it in the reference to The Black Cat and the contact man? A. I see nothing obscene. They are all perfectly proper words. I can imagine only two forms of indecency and one of them is a word that in itself is indecent. Many of the so-called four letter words that are all freely used by modern authors, especially by Hemingway, in a book published by Scribner, one of the finest publishing houses in the country, and I have never used it. The other word is a word that in itself is frequently harmless and I think the court decided itself that it would be a word which might arouse illicit emotions in the breast of someone using those words, which I never have, and I can't imagine the passage you read there as being obscene. It is not in itself indecent. A contact man is used by everybody. Establishment is not an indecent word. The Black Cat is best known in America as a title of a magazine which had a great success for many years and the type of a short story by Edgar Allan Poe. I assume that what he is trying to say is that this man was a roper for a bawdy house.

Q. That is correct. A. I don't know if there is anything indecent about it. If you are writing a story how are you

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going to say he is a roper for a bawdy house than do as it is used here? You have practically made it unintelligible for many people and a few old men like myself.

3424 Is that all you want?

Q. That is all I want on that one.

Now, did you ever hear of Edmund Gilligan? A. No, sir.

Q. He wrote an article called "The Court of Lost Ladies" on page 60 in which he describes a typical night court scene in a New York City night court division of the Magistrate's Court. He uses the words "street-walker", "syphilis", "prostitute".

What can you say about the use of those three words from the standpoint of decency or indecency? A. I should say that they are all perfectly harmless words. If you have to refer to the things you have to indicate, you have to refer to them. I have seen them in the New York Times. It so happens that when I was a newspaperman I was the first newspaperman in the United States who ever wrote or printed the word "syphilis." That was the year 1911. Syphilis then was a hush-hush word and I used it in the old Baltimore Evening Sun and I was given a rebuke in the office for doing it and insisted it was a good word, and finally had an order passed that it was a good word and could be used only when no other word could be used.

3426 In those days syphilis was used to mean a social disease and had no sex whatsoever, and was a filthy, dirty kind of evasion of the facts.

A little after that some Government official of high rank delivered an address about the problems of syphilis and it got into the press associations and most other newspapers as "social disease". That is thirty years ago.

Only a little while ago I saw the word "syphilis" in a headline on the first page of the New York Times.

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The American public has made great progress in understanding obscenity when they have given it its proper place and value.

I have seen the word "gonorrhea" in the New York Times as I have "street-walker". Everybody knows that fact. "Streetwalker" might mean anybody walking the streets, as a policeman. It is used as a euphemism, designating a peregrinating prostitute. They have other names; "cruisers", "battleships", and so on. There is a whole long list of euphemisms that are derived from different classes of naval vessels. The big ones are called "battleships" and the little ones "destroyers", but "streetwalker" has been in every paper in the United States. It is a word that is frequently used except by children under two and there is no suggestion of indecency in it, not the slightest, not to any normal mind.

Q. Now, in the June issue, on page 134, an article by Roscoe Fleming entitled "Libel suits were as wine to that hell-firin' editor of the old West, Dave Day".

By the way, did you ever hear of this man Day? A. Yes; everybody has heard of him. He was an author of many famous American epigrams. He was one of the basic old-time newspaper humorists who was well-known in his time. He is now, of course, forgotten, but he was a man who had a tremendous following.

Q. This article says that Dave Day was the editor of the Colorado Durango Democrat. A. Yes, sir.

Q. That is a fact, isn't it? A. To the best of my knowledge and belief.

Q. At any rate, there was such a person as Day. I confess coming from Brooklyn that I have never heard of him. A. I never saw him but I heard of him as one of the old time Western editors, of which there were many, whose stuff was copied in the East. They were the basic men in the American

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3430 school of American humor, of which Mark Twain was the greatest and Bob Burdett was one. He was a clergyman, but he was a little rough. They were writing in the West in a rather spacious day before Sunday Schools had been open.

Q. He has a reference to one of his papers which is repeated here in this article that caused us some trouble here. The article says that he once wrote in his paper as follows:

3431 "In future, all communications to the Muldoon will be marked with an asterisk to show that the editor disclaims responsibility. Each correspondent will have his own" and then there is an asterisk sign there and we finally worked it out after several days that it was meant by the reporter to mean ass to risk. A. I suppose so. It is very typical of the day and of the whole school of humor to indulge themselves in that sort of thing. The word "ass", of course, in those days, nobody ever had discovered that it was improper and it was used freely. Then came a prissy era in the United States in which certain words disappeared from usage, but nobody, according to my knowledge, in the whole history of the world, thought the word "ass" was obscene. I know of no such person and I would have heard of it if it ever happened.

Q. You should have been around here. A. May I apologize to Your Honor if I seem to argue. But if I do, stop me, because these things make me a little hot.

3432 Q. Now, in the August issue of page 30, and I am gradually approaching the word "behind," in that article: "Many Wives Too Many" appear the words "sunny south" in this connection; this is an article which comments in a satirical way on a proposal of Dr. Joad of London with respect to plural or multiple marriage to solve the discrepancy between men and women in England, and in the course of the story by David Emory, he said: "The cook-stove wife may consider as part of the deal, her loving six-time papa giving her at least

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an adoring pat on the sunny south as she's bending over the cook stove and letting her pores drip onto the skillet".

3433

Now, what about the use of the words "sunny south"? A. It is not alleged that "sunny south" is obscene, is it?

Q. I believe it is. A. I can't answer such a question. It is too absurd. Sunny south is obviously an attempt at humor. I myself in such a situation use the word "caboose", but then everybody has his favorites. You have to sometime in this life, living a biological life of mammals, refer to back-side, and in humorous writing, which this is, there is an effort to invent charming and, if possible, euphemous backsides. There may not be enough euphemisms and this man is inventing sunny south. I never heard it before. The idea that it was obscene shocks me. I didn't know anybody was absolutely so indecent that he could consider it that way.

3434.

Q. It seems to me to be a term of limited situation and only applied when a woman is facing north. A. Apparently so, only what he would call it if she was facing south, I don't know.

Q. Now, in the second column, the same part of the woman's anatomy is referred to as follows: "Unless Dr. Joad is lush with shillings, she can count on one of the four sessions being at a fish and chip coop where she will have to perch her fanny on a peg or stool." A. Fanny is a euphemism used by school children. Again the backside. It is very old in English. There is a considerable debate as to its origin. It apparently was named after some woman, apparently a vaudeville actress in London who was well developed to the rear, and it is a completely harmless word. Little children five years of age use it and it has no obscene connotation whatsoever, and does not refer to sex, even remotely.

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Q. On page 144 there is an article entitled "Offensive on the Home Front," and the same part of the anatomy is re-

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ferred to as follows: "Dorothy began to cry loudly and headed out of the room. Dizzy and with the taste of blood in his mouth, he noticed how large the uniform made her behind look."

What can you say about the use of the word "behind"? A. Is "behind" the word complained of?

Q. I am afraid so. A. Gracious. "Behind" is a word—by the way, I have made a note, if Your Honor will permit me, I want to refer to a note. I want to get it, if I may.

Chairman Myers: Go ahead.

3437

The Witness: No, I had no note about "behind." I had a note about "backside," which is considered much more—"behind" was taught to me as a boy in the nursery as a children's euphemism. I knew no other word for the rear part until I was probably four years of age and became sophisticated.

At the age of three all children in Baltimore in the kind of society I was brought up with called "backside" the backside and it wasn't considered unpleasant or indecent. They knew no other word, and there was nothing obscene in it at that age. That is before Freud. Children didn't know anything about sex.

3438

Q. Now, in the October issue— A. Excuse me. Haven't you got "backside" here?

Q. No, I haven't got the word "backside." A. I am prepared for it.

Q. Of course, you know I could ask you a hypothetical question if it had been used what about it? A. I have answered it, Mr. Bromley.

Is "bawdy house" another word?

Q. I was going to come to that in a minute.

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Here is a piece of fiction called "Portrait Above the Fireplace." Near the end of the story on page 128 the word "Madame" is used but in this setting: "Tressant hesitated but he went on. 'Of course you don't know John. I hate to think of anyone ever laughing at you. But that is a portrait of Mabel Haynes. She was the Madame of the highest class house in the old district.' "

3439

What do you think about the obscenity of that reference, with especial consideration of the word "Madame"; also "house"? A. I can hardly answer that because it never occurred to me that the word like "Madame," which is really a euphemism, the more vulgar name was "landlady," and to call a woman a Madame of a bawdy house was to rather flatter her; she was considered a rather high-toned woman if you did that.

3440

If you consider that such a thing as "bawdy house" exists in the world, and in view of its existence it is all right to mention that fact, I don't know how you are going to refer to the keeper of it by any better word than "Madame." I don't think it is obscene. I see nothing obscene about it whatever.

Q. Now, in the November issue we find the usual theatrical critical column by George Jean Nathan. You know him, don't you? A. Yes, I know him.

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Q. We find in this column which appears on page 77 that Nathan has this to say: "By way of amplifying my last month's departmental critical bit toward improving the new season's theater and making everybody a little happier, I propose that the following characters, scenes, dialogue, settings, stage business, etc., be promptly edited out of any plays which may be scheduled for production," as follows: "Simple interior sets, otherwise perfectly all right, which, for no good reason, and merely because their designers can't

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resist a little artistic self-expression; include such stairways as has seldom been encountered outside of Palazzo Vespucci or an old time St. Louis sporting house, and which when the plain, every-day characters come down them suggest a big throne room scene in the old road production house 'In the Palace of the Kings,' with Emil, the local butcher's boy, hired as an extra, grandly making his entrance as one of the Dukes."

3443

Now, what about the use of the phrase "old time St. Louis sporting house"? A. "Sporting house" again is an euphemism. Everybody knows what the proper name is, and like "bawdy house" it is used as an euphemism. It is even more euphemistic than "bawdy house" and I might not use it in speaking to a Bishop unless I knew him very well, but it is not a thing that has any indecent connotation. If you assume that such an establishment exists on earth, it has to have some kind of name, and that name is "sporting house" or "bawdy house."

3444

Now, this Nathan, you asked me if I knew him. I know him probably better than anybody on earth for many years. We have been intimate friends for 40 years, and he is really at bottom a very strict and rather proper fellow. He is very careful in his language and he is particularly opposed to riotous obscenity on the stage, and he has always been opposed to it. Not on moral grounds, but merely on the ground that it was boring and was not amusing at all, so he is rather finicky in his vocabulary. He avoids many words that I, myself, can see no harm in, and the kind of things that he and I write naturally are the words that determine a refined and over-refined vocabulary and which have an appeal to a very elegant class of people, presumably at least.

Is that all?

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Q. No. He used the phrase "bawdy house" in the same article. He says this, among those things to which he objects:

"Any more points about someone who mistakes an innocent institution for a bawdy house" and vice versa. A. "Bawdy house" is included in the new English Dictionary, which is the large Oxford Dictionary, 12 volumes that would almost fill the Court's desk. The first example is dated 1552. It has always been used as a sort of euphemism to avoid the more direct terms of old English. It occurs in Webster's New International Dictionary, the chief authority of America, which is in all public schools, put in in my State by law, and it is the absolute authority of the Supreme Court of the United States for spelling and other things, and it is used by both the Army and the Navy and all American universities and colleges, and all public schools and all newspapers.

The phrase "bawdy house" has been in it ever since Webster published his first edition in 1828. It is in there at this minute without any mark on it to indicate it is indecent.

So is the word "backside." "Backside" goes back—the new English Dictionary marks it circa 1500, and one of the excerpts they give of it is from Addison.

As you may know, the new English Dictionary is the greatest work of lexicography ever done on earth. It took 70 years to complete it, and it cost \$70,000,000. It is the highest authority ever heard of on English, and one of its peculiarities is that after defining a word and giving the etymology it gives an example from each century. Hence, it is a really gigantic work.

Its respectability has never been questioned by any human being.

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Henry L. Mencken—for Respondent—Direct.

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Q. Finally, Mr. Mencken, Mr. Nathan says in paragraph No. 21, listing things to which he objects, the following:

"Den don't gimmie any a dat crap! What da hell did yeah tink I wuz gonna do? Hang around dis dump waitin fer Santa Claus tuh take care a me fer Chris sake? Looka you! What a yuh got? Six years yuh went tuh college an' what da hel a yuh got? A lousy handout a thoity bucks a week! Not fer me! Yeah, I got mine, but I took it!" A. Who is he quoting, a theatrical manager? Is that a quotation?

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Q. That's a quotation and we have assumed—at least I have assumed—that is from one of the "Dead End" boys in the play. A. I can't answer for plays. I never go to the theater. I assume that is a quotation because that is not Nathan's style.

Q. It is a quotation. A. What is the word complained of, if any?

Q. "Crap." A. Will you read the sentence with that in it?

Q. "Den don't ginimie any a dat crap! What da hell did yuh think I wuz gonna do? Hang around dis dump waitin fer Santa Claus tuh take care a me?" A. It is obvious from the context that "crap" means nonsense, which is its primary meaning.

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"Crap" is a very old English word which is used in my country, at least, Maryland, to signify nonsense.

It has, I believe, an excremental significance, but that is rather rare, and I think it is not talking about excrement here but is talking about nonsense. He is not using the word in the indecent sense, if it has any, and I want to explain there that many words have both a decent and indecent significance. That is an example, and the word "jive" is another example. There are many, many such words.

Henry L. Mencken—for Respondent—Direct.

An innocent word such as the verb "to block" has an indecent significance, but certainly if a man said the street cars were blocked no one would allege that he meant that they were being ravished.

I can only answer there that I can't see even the remotest indecency there. He is plainly trying to tell these men to stop talking foolishness.

Q. Are you at all familiar generally with the magazine Esquire? A. More or less, as I am with any magazine; yes, sir. I have written for it once or twice in the past, the last time I think about four years ago, and I will appear in it again some time in the indefinite future—I don't know when.

Q. Will you tell us, please, what is Mr. Nathan's reputation as a critic? A. Well, that's pretty hard. His reputation among his customers and readers is that he is not only the best living American critic, but the best that has ever existed.

His reputation among actors and theatrical managers is that he is the worst. A critic's reputation is a delicate thing. I was a critic myself once and can tell you by personal experience that some people had unfavorable views of me.

If you mean what is his competence, I can tell you Nathan is a man who has spent his whole life in the theater, he has no other interest on earth, and probably knows more about the theater than any other man. He is a walking encyclopedia. When I want to know this or that I never bother to look in a reference book; I merely write a note to Nathan.

On the side of learning, no one can match him. I think that is generally admitted.

Q. Can you give us your opinion, Mr. Mencken, as to whether in your opinion the magazine Esquire has any literary merit? A. Oh, I should say that Esquire has very

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Henry L. Mencken—for Respondent—Cross.

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high literary merit if you judge by the kind of people that write for it.

Practically all the principal American authors have written for it in my time, headed by Dreiser, and including every author of any significance whatsoever. Of course some authors of much lesser significance have been in it constantly, but that merely means that the number of first class authors doesn't go around. There are not enough of them.

It is a highly reputable magazine and, as I have always understood, it is printed at a high price and addressed to adult men, not children.

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There is nothing in it to interest anybody but a male and the answer to why it is so regarded is shown by its advertising which largely consists of things for men.

I understand that is the theory of its founding and that theory has never been changed.

Mr. Bromley: That is all.

Cross Examination by Mr. Hassell:

Q. Mr. Mencken, does Esquire have any reputation so far as you know for being a risque or sophisticated magazine?

A. Sophisticated, but not risque.

3456 **Q.** How do you distinguish between those? **A.** Sophisticated, I should say, would be a magazine that appeals to a civilized man in his relatively light moments, and risque would be a vulgar thing addressed to morals.

I don't think there is any appeal to the ignorant or the young in Esquire. It is over the heads of all such people.

I know that everything that I have written for it, which has been little, has been aimed directly at grown men.

Q. Did you state that you had been a pioneer in the use

Henry L. Mencken—for Respondent—Cross.

of formerly taboo words, Mr. Mencken? A. I did not; no, sir. I said I had studied. I personally use such words only when I can't avoid them. I have not been a pioneer in the use of any such words.

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Q. Mr. Mencken, you are the author of a story called "Hat-Rack", aren't you? A. I am not, sir.

Q. You published it in your magazine? A. I did, sir.

Q. That story had to deal with some sexual activity in a boxcar or freight car? A. Not specifically. It dealt with people who engaged in sexual activity, but there was no scene of sexual activity in the story.

Q. Was "Hat-Rack" the name of the woman who did that? A. Nickname. Did you ask who wrote it?

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Q. No, sir; I did not. A. I will tell you if you want to know. It was written by Herbert Asbury, the great-grandnephew of Bishop Asbury, the first American Methodist bishop.

Chairman Myers: For whom De Pauw University was originally named.

The Witness: I didn't know that. There was a report that Asbury was the great-grandson of the Bishop, but the Bishop actually was a bachelor. He is a great-grandson of the Bishop's brother.

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By Mr. Hassell:

Q. Mr. Mencken, was the issue of your magazine containing that story declared non-mailable by the Post Office Department? A. Yes, sir. I think you ought to let me explain what happened, if you care to.

Q. Yes, sir; go right ahead. A. The Post Office entered that case rather late. An effort was made in Boston to suppress the magazine as a measure of revenge by the Boston

Henry L. Mencken—for Respondent—Cross.

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Watch and Ward Society, which we had been denouncing. They proceeded by threatening a newsdealer. The poor newsdealer had no stake in the thing and was willing to subside and withdraw the magazine, so I went to Boston and sold the magazine myself on Boston Common and insisted on the Watch and Ward Society arresting me.

I was arrested, tried and acquitted.

Meanwhile, subsequent to my arrest, and four or five weeks subsequent to the time the magazine had gone through the mails, the Post Office Department issued an order barring it from the mails. It was a purely imaginary order. There were no more to be mailed.

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So I went to court on that and I had injunctions against the Post Office by two Federal judges, both of whom denounced the Post Office as obscene, indecent, unfair and ignominious.

I agreed with the verdict thoroughly and believe it was just to this minute.

The Post Office tried to hit me in the back when I was fighting with the filthy Comstocks in Boston. I fought the Comstocks and I fought the Post Office, and I put my magazine back in the mails and they have never molested me since.

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Q. Didn't the Federal Court in New York refuse to issue an injunction as the case was moot? A. That is not precisely what happened. I had my injunction in the district courts of Boston and in New York, and the Post Office, pursuing its filthy course of trying to persecute me, appealed to the Circuit and the Circuit after two years decided that the case was completely moot because we were in point of fact through the mails. They decided I could not get relief because the Post Office barring me from the mails was completely dishonest—I wasn't an applicant to the mails.

Mr. Hassell: That's all.

Henry L. Mencken—for Respondent--Redirect.

Redirect Examination by Mr. Bromley:

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Q. What magazine was it, Mr. Mencken? A. The American Mercury, and the judge who wrote the Circuit decision deciding that the case had become moot and we had no further recourse, was Judge Martin H. Manton. He later served three years in the penitentiary.

Mr. Hassell: Not for rendering that opinion, though.

The Witness: Unfortunately not.

By Mr. Bromley:

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Q. Just so the record will be straight, his name was Martin T. Manton. A. That is right.

Mr. Bromley: That is all.

Mr. Hassell: That is all.

(Witness excused.)

Chairman Myers: Call your next witness.

Mr. Bromley: Could we have a short recess, if Your Honor please?

Chairman Myers: Yes. We will take a short recess.

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(Whereupon, a brief recess was taken.)

Chairman Myers: Come to order, gentlemen.

Mr. Hassell: Mr. Chairman, may the record show that the testimony of Mr. Mencken was received subject to my general objection?

Chairman Myers: Yes.

William P. Jacobs—for Respondent—Direct.

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WILLIAM P. JACOBS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Bromley:

Q. Will you give us your full name, please, sir? A. William P. Jacobs.

Q. You live where, Doctor Jacobs? A. Clinton, South Carolina.

Q. You are the President of Presbyterian College in South Carolina, are you? A. Yes, sir.

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Q. And you have some connection with the world of sports, I believe, sir? A. I am very much interested in sports as a means of building citizenship, young manhood.

Q. Among other things you are the donor of the Jacobs Interference Trophy, are you not? A. Yes, sir.

Q. Would you mind telling us what that is? A. About 15 years ago I felt that the unsung heroes of football should be rewarded for their unselfishness. I wanted to encourage recognition of the citizenship building qualities of the game of football, so I started giving a trophy to the interference runners in the football teams of the Southeast, the Southern Conference, and also South Carolina.

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Q. You are also the donor of various tennis trophies, aren't you? A. Yes; my principal interest in tennis, however, being in the tennis clinic, an institution which I had the privilege of starting a few years ago when I served as vice president of the United States Lawn Tennis Association.

There are thousands of them held over the country now whereby the young tennis players get a right start in tennis and learn the lessons of sportsmanship and citizenship up building qualities of the game.

William P. Jacobs—for Respondent—Direct.

Q. Have you had a close association with young men in various sports fields in this part of the country, the South and Southeast? A. Fortunately, I have, sir.

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Q. And have you or have you not made a study of their attitudes in general, so far as morality is concerned? A. That is my most interesting study. It is a sort of a hobby with me. I am not an expert, but it is an interesting study.

Q. Do you think you are reasonably well familiar with the moral standards and attitude of young men in sports in this part of the country and the South and Southeast? A. As I said, I can't pose as an expert, but I am certainly an interested student of sportsmanship and the attitude of young athletes.

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Q. Based upon the results of your studies in this field, will you give us your opinion as to whether you have found anything harmful in the 1943 issues of Esquire to young men of the sports age? A. On the contrary—

Mr. Hassell: I object, Mr. Chairman. I don't believe the qualifications recited by Dr. Jacobs.

Chairman Myers: I doubt very much—he says he is not an expert.

Mr. Bromley: Well, I will try it this way.

By Mr. Bromley:

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Q. Are you acquainted with the sports contents of the magazine Esquire as it has appeared in the eleven 1943 issues? A. I have and I have read the articles.

Q. What is your judgment as to the merit or lack of it in the sports part of the eleven issues of Esquire? A. Well, I would think that the articles are calculated to good sportsmanship and an attitude of fair play. I think there is an uplift caliber in the articles.

William P. Jacobs—for Respondent—Direct.

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I think that the magazine has contributed constructively towards the encouragement of sports, clean sports.

Q. Do you think that the polls which they have conducted and the results of which have been published each month, have contributed anything of help to the sports world? A. Definitely. Those studies have been needed for some time and I believe that the contribution made by the studies is worth while in the promotion of an interest in sports, participation in sports, and the constructive citizenship-building characteristics of sports.

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Q. Do you find that that feature of the magazine at least has a ready acceptance and wide circulation in the world of sports, as you know it? A. I believe it has.

Q. Is it a fact, Doctor Jacobs, that in each one of these issues with which you are familiar, there is a substantial part devoted to sports? A. I have not analyzed the percentage content of the magazines and these issues, but in a general way I would say that the emphasis on sports is constructive and worth while and important, and represents a relatively important feature of the function of the magazine.

Mr. Bromley: That is all.

Mr. Hassell: No questions.

Mr. Bromley: That is all, sir. Thank you, very much.

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(Witness excused.)

Mr. Bromley: Mr. Gingrich.

Arnold Gingrich—for Respondent—Direct.

ARNOLD GINGRICH, a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Bromley (Continued):

Q. You had gotten as far in your testimony, I believe, as the conversion of the magazine Esquire to a monthly magazine and its first issue in October, 1933. Is that right, sir?

A. That is right.

Q. Will you tell us briefly and generally how it developed from then on? A. Well, with the first issue we established a circulation level of roughly 100,000 copies. That represented a size of circulation about comparable at that period to the so-called quality group of magazines, Harpers, Atlantic Monthly, Scribners, then still functioning—this would be the beginning of 1934—and the feminine counterparts of Esquire as of that moment, Vogue and Harper's Bazaar.

They all had about 100,000 circulation.

Beginning, as of that time, with the intent of selling this magazine to men and through men's stores, and not thinking of it as one going into general circulation, our content as of the first phase of the magazine was pretty strongly not only embracing men's interests exclusively, but even since, you might say, it also had the anti-feminine point of view from the point of providing a magazine which would provide surecease from what we might call the over-feminine point of view of our reading matter and magazines.

I would like to stress, in speaking of the development of the magazine, that when I speak relatively of the early stages of the magazine, through its changes that came in a natural business evolution, along with the increased circulation of the magazine, I am speaking relatively.

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Arnold Gingrich—for Respondent—Direct.

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I would like to state categorically that I have never written or caused to be published nor have I been interested in publishing obscene matter, by even the broadest definition of the term.

Nevertheless, in the opening phases, since we were thinking of the magazine as being read by men and as a relief from the undue feminization of general magazines, our humor and our articles and our fiction all stressed a man alone angle—you might call it a stag party type of treatment.

Our cartoons as of that period were very largely concerned with that type of humor.

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I may also remark that there had not been any cartoons in full color up to that point. That was one innovation in the magazine.

I ask the Board's indulgence for being so detailed on these things, but they are points that I would like to get into the record as a proper background for an appraisal of the 1943 issues. I will make it as fast as I can.

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Q. I would like to go back a bit. Had you, prior to this time, done any writing yourself? A. I had done some writing—not what you would call serious writing. Along with advertising copy writing I had written occasional articles, book reviews, or even occasional stories, the sort of pot boiler type of work just done for the sake of getting some extra money. I didn't get a chance to do any serious writing at all until 1934, at which time I wrote a novel. That was the only really serious writing I had done.

Q. Now, going back to 1933, was the magazine then sold for fifty cents a copy? A. Yes, it was.

Q. So that the price has never changed? A. The price has never changed, only the frequency changed. It was launched as a quarterly and continued as a monthly after the first issue.

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Q. When it came out in the original days of 1933 and 1934, what about its size? A. The size was as it is now. The binding was different, but the format was essentially that which it continues to employ. 3481

Q. That is to say it would run from 150 to over 200 pages. Is that true? A. Yes, the very first issue was quite well under 200 pages, but during our first year I believe we averaged in excess of 175 pages and there has been very little change with the exception of a few years in which the presence of a good deal of advertising raised the possibility of the size of the issue being larger, but as a norm I would say the magazine has been roughly the same size with the exception that our holiday issues are much larger. 3482

Q. And has always sold for \$5 a year? A. Always.

Q. You heard the witness the other day, Mr. Hall, I believe, who said the advertising content of these eleven issues was about 35 percent as against 65 percent of textual or pictorial matter. Is that your estimate? A. That is our own figure. We independently, in Chicago, in the editorial office, our own research department, maintain a constant breakdown of every issue, and I would say the figure is 65 to 35.

Q. How has that changed or varied from 1933 down to the present day? A. I would say it has remained quite constant and that any variation that might have occurred would have been as a result of changes made since the paper limitations. There may have been more fluctuations since that time than there ever had been up to that time, but, as a matter of policy, our habit always was from the very beginning to increase the editorial content in the issues in which the advertising decreased, so as to maintain a reasonable stable same 50 cents worth in total size of the maga- 3483

Arnold Gingrich—for Respondent—Direct.

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zine throughout the year, with the exception of the holiday issues, which are always much larger. They, however, sell for the same price.

Q. Does the fact that the magazine sells for as much as 50 cents have an influence upon the amount of editorial content you feel you have to give in order to have successful sales? A. Yes, we have always felt that one of the basic reasons for the magazine's success was that it gave a very generous 50 cents worth. That has been the underlying reason for the varied editorial content, in trying to furnish as many different possible facets of interest for the reader, both pictorially and textually, and in the range of subject matter covered.

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Q. Did you at the outset adopt or agree upon or originate an editorial formula? A. Yes, I would say that that formula has changed more than any of these mechanical characteristics about which you have questioned me, and that change was a natural change that came about with increasing circulation.

I have mentioned that we began with 100,000. As of the end of the first year the magazine's circulation was 200,000; as of the end of the second year it was 400,000; and as of the end of the third year it was 600,000.

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Now, naturally, when a magazine goes into the 100,000 circulation category it may run things that it would hesitate to run for a wider audience. I think, for instance, of some of the articles in our first year when we were thinking of ourselves as being a restricted circulation. We ran one piece in particular by Maurice Maeterlinck, which I venture to say required a post graduate college degree in order to even make reasonable head or tail of, and such a hi-faluting, high flown article such as that we would have been less inclined to run at a stage of 600,000 circulation than at 100,000.

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And also in the development of this magazine in its first three years, having begun with color cartoons and with full-page cartoons, we attracted a good number of imitators. There were various magazines which had various other related titles to that of Esquire, but the imitation copied only the superficial aspects, the smoking-room type of humor, much, much grosser than anything we had ever used ourselves, and girl gag content without the solid core of literary and artistic merit that made up the balanced blend and personality of Esquire.

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Surely from no other consideration than that of trying to preserve the magazine's originality and smartness, we tended to get away from that type of gag which we had considered a rather smart attribute of the magazine in the beginning, but which had become very common, and as it became common and became featured in magazines selling for a dime and fifteen cents, we tended to drop it out from a magazine selling for 50 cents.

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So that was one change that you might call evolutionary.

We also felt, as the magazine grew as a business property, that we were being typed unduly as an advertising medium by our original extreme emphasis on the exclusively masculine type of feature and emphasis in all the magazine's literary and humor content, so we began rather consciously broadening out in that aspect as well.

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Now, those are the only basic changes that have occurred in the magazine's content from the period of its inception up to the war period.

Now, as of the war period—and by "war period," I mean roughly 1940, because with conscription and with the defense program; I think of that time as being the beginning of the war era for us, editorially. And there has been since the war some natural change that has been an adaptation to war-time demands.

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For instance, we have found that our fashion pages for men have had to concern themselves a good deal with uniforms in addition to, and, to some extent, replacing some of our emphasis on purely civilian fashions, and also the obvious change that we have been increasing, in answer to constantly increasing demand, the pin-up elements in the magazine.

Those things are a war-time phenomena.

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Q. Has the type of article or story changed its character since the war time? A. Very much. Our article content—I would almost say that of this past year under consideration as a whole that there has been some war-time coloration of the majority of the articles. There has been some secondary consideration over and above mere literary and entertainment motivation for a majority of the articles. That, too, has fluctuated, depending upon the state of the war effort.

In the early part of the year I think examination of the issues will show that as of the time when public officials were making speeches about complacency and how we were losing the war, we stepped on the accelerator a great deal more heavily in writing inspirational, morale-building types of articles than we have in the latter part of the year when there has not been the same apparent need for it.

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Q. You used an expression a few minutes ago in saying after a while you dropped out the "girl gag" type of cartoon. What does "girl gag" mean? A. I was using that loosely as a description of the various imitation types of Esquires that sprung up from time to time from the period after 1936, when Esquire had become conspicuously successful with its humor content. There were a lot of such magazines. They actually contained never a really serious article, seldom any actual full-length feature materials such as our articles and stories and sports articles, but they would

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simply trade upon the superficial aspects of Esquire and emphasize what to us were the features that we least wanted to see become cheapened and common.

The girl gag, of course—I don't use the term as one of opprobrium or even derision—there is nothing wrong with having girl gags in relation to the content as a whole, but what I mean is that these magazines were made up of almost nothing but the obvious gold-digger type of cartoon, that type of feature.

Q. All right. Now, will you go back and tell us about your editorial formula? A. Our editorial formula is a balanced blend in which we try to maintain an average over the year, and at the same time not to have too regularly pigeon-holed issue by issue.

We don't want to become so formula conscious that you can lay down one issue on another and know that on such and such a page will appear such and such a feature, month after month.

But taking the editorial feature as a whole we maintain nearly 65 percent editorial content, that is, on the issue in its entirety, and 35 percent advertising, and the remainder text.

Breaking up the text, we allow approximately 10 percent—this meaning issue to issue, to sports, and approximately an equal proportion to fiction. Then we have for the articles 19 to 20 percent; and that includes personality articles. We quite often will treat in a given subject, though, some conspicuously successful or colorful personality in that field. Then we devote about, as of now, 7 percent to fashion. That would have been in peace time another 10 percent, but that, as I say, is at somewhat of a minimum during the war.

Q. What kind of fashions? A. Primarily men's fashions. Since the magazine has broadened out so much in its reader-

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Arnold Gingrich—for Respondent—Direct.

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ship, and since it has attracted women readership to a degree larger than we ever expected as of the beginning, we have only, as of this year, very retiringly and very gingerly, dared to include some women's fashions.

As of this year, there is almost, I would say, 20 percent attention to women's fashions and the remaining 80 percent to men's fashions in our fashion content.

Then we devote, consciously maintaining this balanced blend, another roughly 10 percent to the arts as a category, and then we have—I have not added up these percentages so it is hard to know what I have accounted for and what I have not without looking at an issue—well, our departments represent another approximately 10 to 12 percent.

Then, we have additional features in the way of games and quizzes and things that are simply little boxed items, meant to relieve the monotony of straight text carry-over pages throughout the body of the book.

I think the last breakdown I remember looking at was approximately 3 percent.

Q. What do you call your departments? A. Our departments are the theatre, books, potables, a term we have given to all beverages,—that is, to wines and liquors,—and edibles, a department devoted to cooking and to connoisseurship of food, and wearables, which is a text fashion feature.

Those are the main ones—and a rather general category called the lively arts, which is a designation for the regular articles of Gilbert Seldes, who moves back and forth from the ballet, the movies, to the theatre, to radio, and the entertainment field, but always with some artistic emphasis to it.

I think I will have to look at an issue for the departments to make sure that I have been over all of them, and not overlooked any.

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I have stressed the most important ones. There is one as of this moment, which is again a war-time feature, "Goldbricking with Esquire;" the double spread of selections from army camps and Army and Navy publications.

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Q. While we are on that, what is your idea of or purpose in publishing "Goldbricking with Esquire"? A. That has been done with a twofold motive. From a business point of view, we have been constantly cultivating the good will of the members of the armed forces ever since the fall of 1940 when the defense program really got under way.

I would say that our motivation there is approximately half editorial and half business, using business in the long-term sense. We think of these men in the armed forces as being an extremely valuable advertising market and we have been making a very conscious, selfish effort to establish ourselves as firmly as possible with those men in the armed forces in the belief that they will constitute the most important single block of customers for the post-war years, and then that they are extremely valuable from an advertising point of view.

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Therefore, we have in all these issues, ever since the percentage of the male population under arms has achieved measurable proportions, stressed particular appeal to the members of the armed forces.

We have quoted these gags out of all of these various Army camp papers both because we think they are of interest to the men in the armed forces, to see what is appearing in the various other Army and Navy papers; and because very frankly every time we make a selection from any one of these camp papers of a citation—I use that in the harmless sense of the word—they practically declare a field day and devote practically the next issue in saying

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Arnold Gingrich—for Respondent—Direct.

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that Private Jones made Esquire and make quite an occasion out of it. The response has been quite extraordinary and we felt we were gaining a great deal through that.

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Q. What is the significance of the word "Goldbrick"; that title? A. To "goldbrick" is a word for "soldiering," for fooling around. It is Army slang, and it is not confined merely to the Army. I have seen it in Navy publications. That feature had more or less of a natural evolution in that we received so many of these Army and Navy publications which were sent in to us by their editors, all really over the course of the last two years, before it ever occurred to us to make a separate department of quotations from them. We used to read them with considerable care, just as a guide in our own editorial qualities in selecting matter calculated to be of appeal to the men in the Army and the Navy.

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Q. Now, will you take the January issue of Esquire and give us, please, some indication just of the nature of the articles and the authors which appear in that issue? A. Well, the very first feature following the table of content on page 5 is the editorial page, and that is largely devoted in this particular instance to a republication from an Army camp newspaper. This one appealed to us on two grounds: First of all, because it was a parody of an original article in Esquire. It amused us perhaps even more than it might amuse the reader. We felt that the take-off was more entertaining, by far, than the original article had been, and at the same time was serving to illustrate a point that seemed at that moment something well worth making.

I referred a few minutes ago to the fact that there was so much in the press today in the way of talk about the war effort and complacency and that the only thing in which there was no shortage as of that moment was the fact that

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there was a lot of tough talk about everybody's being complacent and everybody spreading complacency; and seeing this item from the camp paper it was, to us, a very wholesome attitude of soldier humor on something that has been characteristic of successful armies throughout all time. I used it simply as something upon which to hang an editorial, saying that since these boys didn't allow themselves to get into that state of mind of excessive gloom, which was characteristic at that moment, the end result of the war could not possibly be anything dangerous or deserving of any doubt.

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Q. That excerpt "Shor Nuff," was that actually published in the camp paper? A. Oh, yes, surely.

Q. And it shows where you got it from at the bottom of the column, doesn't it? A. It is credited as coming from the September 18, 1942, issue of the Fort Ord Panorama, published by the soldiers of Fort Ord, Calif.

3506

Q. Now, somewhere in that column, in the second column, I believe, the author of it in the camp paper made a reference to an individual he called "Woodhead." Is there a man named "Woodhead" and who was it, if there was? A. Well, Woodhead was the author of the original article in Esquire. I think he makes it clear in the article that the man's name is "Woodhead." Since that time Woodhead, himself, is in the Army: I believe he is a lieutenant.

Q. Never mind about him now, but then he was the author of the article which appears in Esquire which this service paper is poking fun at; is that so? A. Yes, that is correct. It is parodying it, it is indulging in a lot of horse play. I mean that from the original article he gagged up the quiz; that would be immediately apparent to anyone who had seen the original article, and to those who hadn't seen it it seems to me it is quite clear. In that respect it is self-explanatory.

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Q. What was the title of Woodhead's article which appeared before in Esquire? A. "Shall I Marry the Girl?"

Q. What was it about? A. It was about sizing up the end term attractiveness as opposed to her momentary glamour appeal of a prospective candidate for romance. In other words, if your main objective answers to the following questions about this girl, resulting in the following table tabulating her various discernible attributes at various prescribed percentages, then you know you are going forward or slowing up, one or the other, and as concerns your intentions it gives you the key to them.

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Q. Now, was your purpose in quoting this article from the camp paper, to make your readers believe that your magazine was a spicy magazine because the word "spicy" occurs in the first paragraph of the article "Short Nuff"? A. Oh, well, if we had to take literally minded every characterization of Esquire that we have ever printed in our columns, we would be so mixed up we wouldn't know ourselves what kind of magazine it was. That seemed to me was a very nice and in no way objectionable thing to say. "The four-bit magazine which is always as busy as a little beaver sandwiching good advice between its spicy cartoons, comes up this month with a male Dorothy Dix who tells you how to pick a war bride." After all, you can't caricature anybody without exaggerating some obvious attributes and overplaying them. I suppose he has overstressed the soundness of the opinion as much as he has overstressed the cartoons, but it would be quite a bit of sourness on our part to reprint the thing in anything but the manner in which he chose to portray us.

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Q. Do you consider the reference to the juking at the bottom of the first column and, I believe, at the bottom of the second column, indecent or obscene? A. Neither inde-

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cent nor obscene. I was fully aware and counted on any ordinary reader to be fully aware of the fact that the man is kidding the pants off Mr. Woodhead. That, I think, he makes pretty clear, and he indulges in a lot of ordinary Army camp type of rough humor in ribbing Mr. Woodhead's relative appraisals of the desirability of this or that attribute in the female.

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Q. Does each issue of these 11 complained-of magazines have an editorial page and an editorial? A. Oh, yes, every issue has an editorial page.

Q. You have always had that? A. Since the first issue.

Q. Now, go to the next feature in the January issue, which is quite conventional, is it not; a page of letters written in by subscribers and readers? A. Well, I hope it should not be quite conventional. We always try to keep it as unconventional as possible.

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Q. Well, conventional in the fact that it is a part of your monthly practice? A. Oh, yes, conventional in that sense. Letters to the editor appear in every newspaper as well. You find it in virtually all of the magazines, and, as I say, in most newspapers. It has appeared in every issue of Esquire since the first issue. Naturally, there were no letters to the editor in the first issue; but it has appeared under that title and with as diversified and sprightly a content as the daily mail would afford for the past almost ten years.

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Q. What object did you have, if any, which governs your selection of these letters? A. Oh, quotability. That is there is a basic premise there. The news value of contentment is nil. Any editor of anything I think would agree with that, that if you were to fill up such a page with "Dear Mr. Editor: I certainly do think your magazine is wonderful and I certainly do like this article and I certainly do like this

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cartoon," you would have the flattest possible page in the magazine as a whole.

By playing down that type and playing up every kind of possible squawking letters, or sometimes exhibitionistic humorous letter that the mail brings us, we have managed to keep the page—it sometimes runs more than a page, but it is a feature which is frequently called our most popular feature by the readers.

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Q. You call it "The Sound and the Fury." A. We called it that, as I say, since the second issue. It did not exist in the first issue but the response to the first issue formed the available material for "The Sound and the Fury" in the second issue.

I think the title is probably self-explanatory. The letters are published in a tongue-in-cheek attitude because most of them are written in a tongue-in-cheek attitude, and rather than answering back we simply give it a label saying that this is "Sound and the Fury", signifying nothing, which is a little like saying, "No holds barred, or all bets off." The page speaks for itself, and acts as a sort of safety valve on occasions when some vociferous part of the audience wishes to talk back to this or that author for any feature.

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Sometimes "Sound and the Fury" will be very largely devoted to some subject which has caused a tempest in a teapot. I think, as a matter of fact, this is something of a case in point. While numerically it does not run over a large portion of the contents, yet there is one letter here that is labeled a letter typical of several score of these letters as published, just in fairness as being one that is allowed to speak for a matter of probably close to a hundred, that came from Negroes who were offended by the story that had appeared in the previous November issue, and our answer appears just beneath the letter and is typical of the way in which we print, and in some instances like this, get expres-

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sions of disfavor or disapproval from some part of the audience.

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A lot of the letters have no other point in them than to reflect the fact that the man was trying very hard to write a letter that would be sufficiently disturbing and off the usual reaction to insure being published in the "Sound and the Fury." In other words, I think there are people who try to make the "Sound and the Fury" such as there are amateurs who try to make a column in the newspaper; who send them in for no reason than to hope that they will be published.

Q. What is the next feature in the issue of this magazine?

3518

A. Well, "Talking Shop with Esquire", which is a shopping service. It is comparable with the similar pages in the front sections of many of the better magazines devoted to the goods on display or available in the New York shops. It is a column that serves as a sort of clearing house for information for readers outside of New York who are interested in obtaining any of these novelties for gifts or other purposes that are featured.

During this period, incidentally, this department has become almost a service men's shopping bureau. We have had instances where we have had money sent in to us in care of this department to buy a birthday present and even to send flowers to a girl in Alabama from a boy in the South Pacific, and a great many services have been given by this department, purely, of course, since the war.

3519

Q. That "Talking Shop with Esquire" goes on for three or four or five or six pages, I notice. A. Yes. It usually runs about three of those pages, although in the holiday issues it is a little larger. You will find that this holiday end of the year there is more of that material than there naturally would be otherwise; that the gift selection in mind makes the feature larger than in the normal issue.

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Q. What is the next thing? A. The next comparable department is "Painting the Town with Esquire", which again serves as a sort of New York guide for out-of-towners; a guide to places to go for dining and dancing; for amusements. It confines itself to the restaurants; it is more a food column than anything else, but it is a guide to what is being put on in the way of a floor show, or what band is playing at what night club or restaurant.

3521

"Backstage with Esquire" is a regular feature which presents briefly articles and pictures of those authors who are appearing in the magazine for the first time. It usually does not include any biographies of regular contributors and we do not devote too much space in there to the well known contributors, but to those for whom the reader might be less apt to have any information of his own.

Q. Are the articles and the fiction separated in the body of the magazine or merely in the table of contents where they appear first under articles and then under fiction? A. Well, they are segregated into strict divisions only in the table of contents and yet in the body of a magazine, since they are labeled as such, you can leaf through and read, for instance, all the fiction and then you can leaf through and read all the articles, if that is what you want to do.

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Q. But the articles do not appear in one section textually, and the fiction in another? A. Oh, no.

Q. They are mixed up? A. They are mixed up, and we try to have no unbroken succession of the same type of material. That is, just as a matter of make-up you will find that fiction alternates with sports and articles as we go through the pages.

Q. Now, what is the first feature in this January issue? A. Well, the first feature in the issue is apt to be one that key-notes seasonally any special significance that the issue may possess.

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For instance, this January issue is a holiday issue and accordingly is given a holiday type of story.

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Now, quite possibly in some other issue there might be an article on a specific theme that is receiving extra attention in that month and that would be the lead off feature, but, in this instance the story by Manuel Komroff is a Christmas story, a highly topical one, and as it turned out now, now that we look back over a year's time, it turns out to be a prophetic story as well.

It talks about the surrender of Italian troops on Christmas Day and the over-all implications and over-tones of the story are that individual Italians, or Italians as a whole, are bound to do the same thing.

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Q. Who is the author? A. The story is by Manuel Komroff. Manuel Komroff is one of the better known American short story writers. He is also a novelist, but his main field is the short story. I would call him a true teller of tales in the old sense of a natural short story writer.

He did do one conspicuously successful novel, "Coronet", but his short stories have been perhaps more distinguished, consistently distinguished for literary excellence than any of perhaps a half dozen American writers.

During the years of Edward J. O'Brien's annual short stories, his book of selections of the best short stories of each given year, Manuel Komroff was consistently starred by O'Brien for literary excellence, almost on a par with Jesse Stuart. Those two, I think, were given the triple star by O'Brien more frequently than any other American authors.

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Q. Didn't he write a book on the Bible? A. Yes. As a matter of fact, he was a Bible scholar in the early days of his career. He did a good deal of research in the back stretches of Biblical knowledge, the parts of the Bible that

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had gotten out of common knowledge, the things that have been in Bibles of other centuries and now are not included in the standard Bible, let us say, the Gideon Bible today.

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Komroff, I should explain, has been writing for us, oh, perhaps as readily and as steadily as any other single author ever since the beginning. There was a Komroff story in the first issue of Esquire and we tried to see that there would be one in virtually every issue after that. He would occasionally miss, as any contributor will, but he reached a point some years back, oh, a couple of years back, at which he found himself running a little short of inspiration for meeting the monthly deadline with any regularity, and I suggested that he do a series, I think it was a series, of Bible stories. He had done that before, he had done one or two just as regular contributions to regular issues. They were very beautiful dramatizations or presentations in short story form of some of the lesser known, less familiar themes and incidents from the Bible, so I suggested to him to try it as a series, to go back to the first two that he had done some months apart and to make a series of them, and he did and they ran for practically two years.

Q. Where? A. In the magazine.

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Q. In Esquire? A. Yes. I would say for about twenty months, and then upon the completion of the series, when he had brought out a complete cycle of them he found himself with a book out of it which was published under the title, "The Years of Our Lord."

Q. Now, there is a cartoon on the first page of this story, you said, page 39. A. Yes. There is apt to be a cartoon in the corner of most of the text pages except where we use a double spread for an editorial feature and give it illustrations. They are an accompaniment to the story itself, but just as a part of the format of the magazine we try to

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make the space work as hard as possible and certainly these days when space is at a premium, we try to include as many cartoons as possible, and this is a device for doing that to get a cartoon and story or article on to the same page.

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Q. Over the page there is a full-page cartoon, is there?

A. Right, page 40.

Q. And another one to the right hand of the following page, 41? A. Right.

Q. What about the article "School for Saboteurs"? A. That is an article written just after the author's arrival in this country; he was a Czechoslovakian refugee. He has written since that time for the New Yorker and for Harper's, I believe. At the time that he did this article his relatives were still in Czechoslovakia, and it was only at the last moment, before its publication, that he felt that he could allow us to use his own name on it. We were going to publish it under a pseudonym out of a sense of deference to the fact that his family was still in the occupied countries.

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It is an interesting sidelight on one phase of the war effort, that whenever it was even discussed before the war got under way, people thought that there would be a great deal of reaction on the part of the populace to the Nazis. Nevertheless, that never quite came off in the degree that it was expected. People used to predict before the war that if Hitler declared war he would find that sabotage would cripple the war effort within a matter of weeks.

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Well, that never came to pass and people began to pooh-pooh the idea of there ever being any reaction from the body of the people as a whole against the militarized people. This article explains and gives a firsthand approach to what you might call the anatomy of the underground. It shows

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how in spite of the efficiency of the Gestapo in these occupied countries, and of course Czechoslovakia was the first of the occupied countries, so you would naturally expect that the efficiency of the occupier would be at its highest point there, he shows that there is a veritable industry of sabotage and underground activity and ingenious methods that had been developed for mass sabotage and training of saboteurs, almost comparable to that of military training.

Q. Now, the next piece of text is a piece of fiction called "Strictly Legitimate Deals," by Louis Paul. A. That is right.

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Q. Who is Louis Paul? A. Louis Paul is one of the earliest of the magazine's discoveries. We were accused in the very beginning of being snobbish in our approach to our text content and also snobbish in our attitude towards men's fashions, strictly out for big names and nothing but big names, so as an answer to that accusation we started out by trying to put somebody in print for the first time in every issue. We might have a big name appear on the first page and then put somebody new next, somebody who was achieving his first story.

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Louis Paul appeared, I believe, in our issue for March—it might have been April, but I believe it was March, 1934—with a story called "No More Trouble for Jedwick." It was his first appearance in print, and when he sent his story in I think he sent a letter in saying that it was an unpublished story and that he was a never-to-be-published author, and that he had written not only this story but two and a half novels, one half finished and the other two practically worn out from being rejected, from one publishing house to another.

The story when we got it was just a little short of being

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a masterpiece. It had a few amateur touches about it which rather spilled over and almost negated the artistic story. It didn't need much touching up to make it really a gem of a story. We published it at that time, I think it was in March, 1934, and it was very gratifying to us to have that story win the O. Henry Memorial Award as the best story in an American magazine for that year, and as a fairly obvious consequence for achieving print one of these heretofore unpublished novels, "The Pumpkin Coach," was published, and was the Literary Guild selection for, I believe, July of that year.

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I remember in accepting that first story of us writing him that we were confident that he would not remain unpublished for long after this first publication of his, and as a matter of fact he did break into a large number of the better paying magazines within a short time afterwards. Magazines and different markets. He has contributed to our pages with considerable regularity ever since that time. His stories have varied a great deal in their range of subject matter, and as one aspect of this effort to play up to the Army we began a series of stories of the adventures of Sergeant Smoot, and they were sort of holding up a comic mirror to life in the Army camps, and this is one of a series of these Army stories that have appeared for the last couple of years since the mobilization became large scale.

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I think about the first twenty of them have recently been put into book form under the title "Ordeal of Sergeant Smoot."

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Q. In the story Sergeant Smoot and Corporal Smith, and Private MacClusky appear and reappear, do they not? A. The same characters appear. They are sort of Four Musketeers, you might say, who are constantly being given the most undesirable duties of the entire camp, and the result is that

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they get into any number of weird misadventures in story after story.

They are comic, they are satirical, and they have an extreme validity and warmth. Louis Paul was in the Army in the last war, and in the first of these he drew largely on the basic humorous situations of armies in every century, but as this series got under way he began visiting Army camps to acquire fresh material for them, and many of the stories have come right out of observation firsthand in many camp centers.

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Q. The next one is an article entitled "Marriage Makes Strange Bedfellows," by Lawrence Gould. Who is he? A. Lawrence Gould is a popular psychologist; that is, an author of popular books on psychology.

I might speak of him as in a sense the successor to another popularizer, that is Dr. Barron Wolfe who wrote other such articles for us, and Lawrence Gould has done a number of these for us since Dr. Wolfe's death.

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This article is a policy article, and I would like to speak of it a bit more fully. This represents and has been our policy really from the beginning of the magazine, with variations in the approach of it that we have had from the earliest days until now. I must point out that there never has been any change of moral approach in any of these things. This has been part of a consciously calculated policy to debunk superficial sophistication, and to try to be as pert and as brilliant and as fresh in promoting homely virtues and in making the straight and narrow path seem attractive, and while the approach may often be at least light, to have a light touch to it, and it may be at times a flippant touch, nevertheless the underlying core has sound reason and purpose in every piece of this type, and that is to reinforce and to stress what I might call the centripetal element of marriage.

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In other words, they are against divorce, they are against philandering, they are against the continental hand-kissing type of smartness. That would go back to 1936 with an article "Latinos are lousy lovers," which was perhaps the most conspicuously celebrated article in that vein which we ever published, and that one was one stressing the long-run value to women of good, solid homespun American males who did not go in for fancy lightness or slick philosophy; but who nevertheless were a lot better offer than the great lover type of matinee idol, and this piece fits in that same slot.

I would like to find perhaps a significant paragraph in it which would bring out that main point about these pieces as a general category.

"Yet marriage can bring both peace and happiness"—

Mr. Hassell: Where is this?

The Witness: On page 176, first column, last paragraph.

"Yet marriage can bring both peace and happiness—at least, most of the time—and the formula is much the same as that for peace between one nation and another. The first, and in some ways hardest step, is mutual understanding, based on the fact that beneath all differences in language and viewpoint, both parties are more alike than they are alien to each other.

"I noticed in France during the last war that with few exceptions American soldiers who could speak French came home (as I did myself) with new affection and respect for their then allies, while too many non-French-speaking doughboys never got beyond the stage of talking about 'damm Frogs.' There is no good reason why a man can't learn to understand, if not to

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speak a woman's language, or a woman a man's. Equally absurd is the idea that there is any fundamental contrast between their aims in life." And so forth.

In other words, the end point and aim, or the basis of this, is to educate a man in the understanding of a woman and thus to insure the preservation of the family relationship. We have had other pieces of this character entitled "Why I am Faithful to My Wife," and another one entitled "Why Divorce?" and this is a typical example of that general type of article.

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I recall some point in the discussions we have had here these last few days, someone saying "We never omit sex." Well, that is a very sweeping statement. We try not to omit sex from any issue if we have a piece that does make this point, but I am not sure there hadn't been enough of them to be able to include something in this category in every issue, but they are a persistent and recurring policy.

Q. Well, there is a cartoon on that page, too, isn't there?

A. Yes.

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Q. I don't know whether that has a sex angle or not, but it is a cartoon of a young girl sitting on a bed and telephoning and saying "This is she—this is her—wait a minute till I get my dictionary." A. Well, it has a very clear sex context in the "she" and the "her," but I think, as it was in Mr. Mencken's testimony, it is a joke on language.

Q. Now, who is the author of the poem on the next page, "Benedict, Awake!" about which we have heard a great deal. A. Franklin Reynolds. He is a newspaper man who is now in the Marines, and who was just trying to get into the Marines at the time he sent in this poem.

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As matter of fact, along with this poem he sent a request for a letter to go to the Marine recruiting officer, whoever it was. He was applying, trying to get in, and the poem was almost—I wouldn't say he sent it in for publication because I don't think he wrote it for publication. He wrote it as a mood accompaniment to his own news that he was passing along to me, that he was about to leave his bed and board and take up arms, and I found the thing so moving that I surprised him with a check for the poem along with a letter to the Marine Corps.

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Q. Had he been a friend of yours? A. No, not a friend, but he had contributed several things in the course of the past few years; not much. I think we had two things from him in the course of the past ten years, but, as I recall it, what he wanted was just a confirmation of the fact that he had sold us some of his writings in the past.

3548

Q. Now, the next piece is fiction, "Testimonial to Hillel" by Louis Zara. Who is he? A. Well, Louis Zara is another of our discoveries. He is a young man we put in print for the first time, I would say about 1935, and perhaps I am wrong in saying we put him in print for the first time. He sold a story to the "American Mercury." I think he sold it after he sold his first story to us but I believe it achieved publication before we actually came out with the story he sold to us, and since that time he has written, oh, approximately a novel a year, and some of them have been—well, all of them have been critical successes and some of the more recent ones have begun to achieve pretty substantial sales.

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This story is a flag-waving story, you might say, but it does it by reverse English. It starts off by saying—"I don't like flag wavers" and then it goes right ahead with a story that is about as obvious a piece of flag waving as the old George M. Cohan stunt, but it is a little lesson on the making

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of an American. It is a little lesson also in race tolerance.

This is the story of the honoring of an immigrant, as it happened, a Jewish immigrant, who is being given a testimonial after fifty years in this country.

I would say that its literary value lets it get by. That it is rather obvious propaganda and has propaganda content, but in this particular point of the war I think all of us are a little less severe in our judgment of the literary contents if the purpose of the thing from a morale point of view seems to justify publication. I wouldn't call it one of his best stories and yet it was one that had a good ingredient in it at the moment in the war effort.

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Q. There is a cartoon on that page too, isn't there, of a little boy looking at a stork, at the zoo possibly, and saying to the stork "It happened the night of March 16, three and a half years ago—going on four—I was the McIntosh baby." A. Yes. I recognize a very remote sex content, if that is what your question refers to.

Q. It does. The previous witness told us about this map which I confess I do not fully understand. He told us about the artist. What is it meant to represent? A. Well, it is meant to represent the abundance of potential strength in this country and to pictorialize for the natives of the various regions this country, the identifying characteristics of their territory. You can look at your own home town and find almost that section is noted for something.

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Q. It doesn't have anything down here for Brooklyn? A. Yes, I think it has.

Q. It has? A. It has a lobster. No, that is north of Brooklyn.

Q. I saw the fish: A. The original of this is about twice this size, I would say. We reduced it by about half to get it into this gate fold because it is the most amazing piece

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of work, and Covarrubias must have devoted more than a year to its creation because every last one of these identifying pictorial characteristics of various places, are all worked out in detail and scale with regard to the individual states.

The text beneath it expresses the point and purpose, that is if a work of art needs an explanation:

"Now, in time of war, we are latently awakened to the grandeur, color, and infinite variety of this America we fight to defend".

It seemed to us in a war-time holiday issue to be a most appropriate pictorial thing to include.

Q. On the reverse side of the gate fold—and by the way, gate fold means this kind of page fold-over? A. Yes. It is a technical term for an extra leaf on any page, allowing it to open up to approximately double size.

Q. What is the photograph on the reverse side of the gatefold? A. I would call it a mood picture, done by Blumenfeld, and it is a trick photograph in the sense that what appears to be two women is actually a reflection. A girl posed with her cheek against a mirror, and Blumenfeld has depicted the camera angle that allows two faces to appear virtually side by side.

Q. Can you tell us about this photographer, Blumenfeld? A. Well, Blumenfeld I would say has raised the knack of trick photography more nearly to the level of art than any other photographer I know. We first knew him in Europe about 1936. He had just then come over to the photographic field from painting. He was a painter, and we obtained some of his photographs in the course of a trip I made at that time in getting material for Coronet. He sent some things over to us from time to time during that period, from 1936 to say about 1940, and then, of course, he became a refugee with the fall of France.

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As I recall, we issued an affidavit of some kind to assist him in getting over to this country, but immediately upon his arrival here he established himself all in a matter of weeks. He was doing color photography and black and white photography for Harper's Bazaar, and I think they put him on a regular contract as a matter of fact upon his arrival in this country, and he has been doing a great deal of photographic work, color photography, for various advertising agencies.

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Q. He did some covers for Harper's Bazaar, didn't he?
 A. I believe he has done some covers for them. He has consistently done a number of black and white and color fashion features for them. Oh, yes; I guess he did covers. I remember a number of them that were quite memorable, now that you remind me of it. One of their holiday issues where there was a woman with her cheek in her hands, wearing different color gloves, red glove and a green glove, and wearing various jewelry.

3558

Q. This man Blumenfeld is the man who did the three "paste-your-face" pictures, one of which has been complained about? A. Yes.

Q. The same man that did this picture? A. Yes.
 Q. Now, what is on the next page, the article called "The Unpredictable Profile"?

Mr. Cargill: Do you select these personally when they come in, these articles?

The Witness: Yes, Mr. Cargill. I select them in the sense of selecting them finally, not solely. We get about 150 manuscripts a day and we have a number of people reading them.

Mr. Cargill: They are screened before they get to you?

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The Witness: Well, different people read different kinds of material. Sports will go to one group and fiction to another group and articles to another group, so by the time I get them they have sometimes as many as six or seven comments on them, and usually there is a recommendation, or let us say a vote, to purchase or not to purchase; by the time I get them, but yes I do have the personal selection at the end of the line.

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Mr. Cargill: You have the final okeh?

The Witness: That is right.

By Mr. Bromley:

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Q. Now, we come to the article "The Unpredictable Profile", by John Decker. What is that about and who is John Decker? **A.** John Decker was a life-long friend of John Barrymore. He is an artist and at one time in Barrymore's career Barrymore was an artist, too. Barrymore was an unsuccessful newspaper cartoonist, and I believe it was from those days, in Barrymore's extreme youth, before he tried the stage, that he and Decker became buddies, and upon Barrymore's death Decker sent in to us a query to ask whether we might be interested in a clear, intimate portrait of Barrymore, and since it came to us as somewhat of a scoop to get the piece so soon after Barrymore's death, and Barrymore was certainly a newsworthy subject, we jumped at the opportunity and asked him to send it right in.

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Chairman Myers: I regret to have to interrupt you at this point, but the Postmaster General wants to see us about something.

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I suggest we adjourn now for the day.

Mr. Bromley: All right.

Chairman Myers: We will adjourn now until nine-thirty tomorrow morning.

(Whereupon, at 4:30 o'clock p. m., the hearing was adjourned until Saturday, October 30, 1943, at 9:30 o'clock a. m.)

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PROCEEDINGS RESUMED.

Chairman Myers: Proceed, gentlemen.

Mr. Bromley: I would like to interrupt to call

Dr. Siebert for a short examination, please.

Chairman Myers: Very well.

FRED S. SIEBERT, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

3566

Direct Examination by Mr. Bromley:

Q. Your name is Fred S. Siebert? A. Yes, sir.

Q. It is spelled S-i-e-b-e-r-t? A. That is correct.

Q. Where do you live, sir? A. I live in Champaign, Illinois.

Q. And at the present time what is your business or profession? A. I am director of the School of Journalism of the University of Illinois which is in Urbana.

Q. What experience have you had in journalism, Doctor Siebert? A. I was graduated from the University of Wisconsin School of Journalism and after graduation I worked for several years on newspapers in the Midwest, Hibbing, Minnesota, Duluth, Minnesota and Peoria, Illinois.

I then went on for advanced degrees and took work at the University of Chicago, University of Minnesota, and then I was employed as an assistant in journalism at the University of Illinois on a part time basis, and took my doctor's degree there along with my teaching duties.

3567

Fred S. Siebert—for Respondent—Direct

3568

I later became a full time member of the faculty of the University of Illinois, became a professor at Northwestern University, and in the meantime I had spent eleven months in England on a fellowship, studying the backgrounds of the regulations of the press in England, and then two years ago I was appointed the director of the School of Journalism at the University of Illinois, where I have been since then.

3569

Q. Will you tell us something about the nature of the courses of study pursued in the School of Journalism at Illinois? A. Our School of Journalism is divided into two curricula, one for students who are interested in editorial work and newspapers, magazines, trade publications and radio, and another curriculum for students who are interested in the management side of publications and radio.

Q. Do you regularly study, analyze, and dissect magazines? A. Since this field of journalism is more or less current, one of our attempts is to keep up with current publications and make assignments of studies in periodicals, magazines, and radio programs as they are produced currently.

3570

Q. In the course of teaching at the Illinois School of Journalism, do you use the magazine Esquire? A. We do.

Q. For how long a time have you used it? A. Well, before my time. It has been on the open shelves at the library there and used as assignments in class work at least for the last six or seven years and probably before that.

Q. Has that magazine along with others been studied in class room work for the purpose of analyzing its content, as to whether it consisted of information of a public character and, if so, how much? A. The magazine, I know, has been used both by professors in the editorial division and by professors in the advertising division for the analysis of its contents. Both editorial and advertising.

Fred S. Siebert—for Respondent—Cross.

Q. Would you say that the magazine Esquire is made up largely, if not chiefly, of material of information of a public character? A. I would.

3571

Q. And advertising, of course? A. When I say information of a public character, I mean that there is in that publication a sufficient amount of that type of material, including advertising, to make it a magazine primarily of that character.

Mr. Bromley: That is all.

Cross Examination by Mr. Hassell:

3572

Q. Doctor, do you regard the Varga girl pictures as coming within this content that you have just referred to as information of a public character? A. No.

Q. Do you regard the cartoons, the Sultan type of cartoons, and other cartoons of a somewhat sexy nature, as having this type of character? A. No. I can see that a cartoon of that—I have seen cartoons that are information of a public character. If you would limit it to some of them, I would say some are not and some are.

Now, the Sultan ones I would say are not; that is the ones you are referring to specifically.

Q. What do you say about the jokes in the magazine that deal with sex situations? Would you say that is information of a public character? A. I can see how some of it might be.

3573

Q. Some of it? A. Yes.

Q. You mean to say that the jokes in the magazine that have a bearing on the sanctity of marriage and things of that sort are information of a public character? A. May I answer your question this way? That if I had before me

Fred S. Siebert—for Respondent—Redirect.

3574

a publication consisting solely of material of the kind you describe, I would say that that publication was not information of a public character, but—

Mr. Bromley: Go ahead.

The Witness (Continuing): But if a magazine, including other material beside the material of the type you just described were under consideration, I would say that that magazine as a whole, taken together with all of its content for the purpose of creating reader interest would be information of a public character.

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Mr. Hassell: That is all.

Redirect Examination by Mr. Bromley:

3576

Q. Almost all magazines have cartoons and pictures and jokes interspersed with other more serious content, have they not? **A.** One of the high reader interest features of one of our most successful magazines, Reader's Digest, and I think all of our students and our editors and our professors realize that that type of material creates reader interest and with that they create the circulations that have come about during the past ten years and it has become a common feature of most publications of national interest.

Q. Now, does the fact that these particular eleven issues of Esquire to which Mr. Hassell has referred contain material like the Varga girls and the Sultan cartoons and other cartoons change your opinion in any way that the magazine as a whole and each issue thereof is primarily devoted to the dissemination of information of a public character? **A.** No, sir; it does not.

Mr. Bromley: That is all.

Fred S. Siebert—for Respondent—Recross.

Recross Examination by Mr. Hassell:

3577

Q. Doctor, one other question. Does the magazine Esquire enjoy a reputation of being sophisticated or spicy?

A. Well, I have quite an association with college people, both professors and students, and right now our student body is mostly feminine, and I was surprised at the reaction of the young ladies in the University toward Esquire, which has been probably directed toward men readers, and from the reaction I got from the co-eds at the University, they did not consider it—you call it spicy—they use that term to describe certain other publications which are available, but not this one.

3578

Q. Doctor, could you answer my question? I was not asking about what the co-eds thought, but whether you regard Esquire as a sophisticated, spicy magazine? A. No, sir.

Q. You do not? ~~A. No, sir.~~

Mr. Hassell: That's all.

Chairman Myers: What is your idea about being devoted—you use the term "devoted"—to literature, the arts, sciences, and so forth?

The Witness: My idea being that that is one of the major appeals of the magazine. It has in each issue a sufficient number of items of that character in that number of the magazine.

3579

Chairman Myers: If it is devoted to a subject, it necessarily may touch upon, but not necessarily be what that subject purports to be?

The Witness: Not exclusively.

Chairman Myers: That is, a periodical may be devoted to literature and not be literature in the best and highest sense?

Arnold Gingrich—for Respondent—Resumed—Direct.

3580

The Witness: That is true.

Chairman Myers: Is the same thing true about art?

The Witness: I should say so. If it is devoted to art, whether it became art or not wouldn't make much difference if that was the primary purpose.

Chairman Myers: That is all.

(Witness excused.)

ARNOLD GINGRICH a witness called by and on behalf of the Respondent, having been previously duly sworn, resumed the stand and testified further as follows:

3581

Direct Examination by Mr. Bromley (Resumed):

Q. You had reached yesterday the point of commencing to talk about an article in the January issue, commencing at page 51, called "The Unpredictable Profile", by John Decker. Will you continue with that, please? A. I believe I had simply said that this seemed to us to be an article of unusual interest in view of its timeliness, coming at a moment when Barrymore, just after his death, was such a news-furnishing subject.

3582

The article all the way through shows the most revealing diagnosis of what made this genius of the American stage tick, as it were.

On the next page, 52, we had a full page cartoon which, as it happens, was one of a recurrent series. There is one of this type in every issue, and I believe, without exception, ever since the beginning of the magazine, perhaps about three or four months after the launching of the magazine, these hill-billy cartoons, called by the artist, Webb, "The Three Mountain Boys", have been featured in every issue throughout the past nine and a half years.

Arnold Gingrich—for Respondent—Resumed—Direct.

Q. Don't we see these hill-billy cartoons, and by the same artist, in many other publications now? A. Not by the same artist in many other publications. You see many that are more or less obviously an imitation of these.

But while Webb has done cartoons for other publications he confines the mountain boys to Esquire. Having begun the feature in Esquire, he has a perfect right to use it in book form for himself, but not to contribute the mountain boys cartoons to other publications.

Where you do see these three mountain boys and the other related members of the family, the little uncle who is perennially about 18 months of age, and Grandma, who is perpetually behind the plow doing the hard work, is in the form of insignia on Flying Fortresses and I believe something like 20 different ships of the Navy, and as the mascot device for any number of military and naval units.

Many of our cartoonists' characters have been requested as insignia and as devices by various units of the armed forces, and one of the most popular has been the mountain boys series.

The artist began drawing these hill-billies, as I say, almost at the inception of the magazine and, to my knowledge, at least up to a matter of something less than a year ago, he had never been south of Connecticut, and yet the mail from that region has for a long time commented on the obvious inside knowledge of the area revealed by Webb.

The next page, 53, is a somewhat technical argument about two styles of skiing, and two styles of skiing instruction. You might call this something of a private fight which became one of public character because the adherents of the two styles of skiing have been battling practically through summer and winter over the last two years in supporting and attacking, respectively, the styles of instruction sponsored by Otto Lang and by Fritz Loosli.

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3586

Each will run an article in our pages showing that by his style you can learn to ski beautifully in a matter of a day, and by the other you can't possibly accomplish the same thing.

Both, as it happens, are very well-known European ski instructors; one Swiss and one Austrian.

3587

Q. Now the cartoon on the right-hand lower part of the page has relation to the article, at least to some extent, has it not? A. It is related matter and we do as a matter of policy, without straining too hard for a tie-up between those articles and the cartoons, try, without pressing too hard, to tie them up, and particularly that is true in relation to our departments.

If there is a cartoon on a bookish subject or a cartoon concerning food, it may be placed in relation to that month's regular department or feature on that subject.

Mr. Cargill: Right at that point, who inserts the sentence below here, "Is there one like this going down?" Who puts that in? Does the artist put that in?

The Witness: They do sometimes. Some we put in. As a matter of general practice, I think you will find that relatively few of the cartoonists furnish their own ideas. They may start that way but they quickly come to depend on gag men who sell the rough idea of a drawing. They furnish probably a crude pencil sketch along with that gag or punch line of the drawing. Sometimes they dislike to be referred to as gag men and prefer to be called idea men, but there are a half dozen such fellows who have made a very fine living out of providing ideas for cartoonists, and as far as our own cartoonists are concerned, I would say

3588

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that E. Simms Campbell, who was in the beginning an idea man himself, almost invariably supplies his own, but almost all the rest of them have to be given the subject; they draw it up.

3589

Mr. Cargill: Do you editorially put some of them in yourself?

The Witness: I beg your pardon?

Mr. Cargill: Do you editorially put some of them in yourself?

The Witness: We have done that two ways. We buy the ideas as they are submitted to us and then we farm them out to our various cartoonists. I mean, there will be an idea coming through in the mail from outside and it will strike us as being one that is particularly suited to execution by this or that particular artist. That is, it fits his style, so we send it to him.

3590

That is a fluctuating market and we don't like to rely entirely on the mailman for it, so we usually have some one employed who is an idea man, who just sits in a quiet office somewhere and devotes himself to nothing but the manufacture of ideas for drawings.

Then we take those and keep our artists supplied constantly with ideas for future drawings.

Mr. Cargill: And all these are submitted to you before they appear in the magazine?

3591

The Witness: Yes.

Mr. Cargill: All right.

The Witness: That is twice. That is in the course of ideas that are to be supplied to the artists; I see them before they go and then I see them again when they come back from the artist. Sometimes we will make changes in the gag line, the topicality may be

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3592

affected. We may get a cartoon that has perhaps lost some of its point by the fact that it refers to a situation that is no longer in the news and we will change it around to the point where it is.

Chairman Myers: You don't have one particular cartoonist, for instance, like some newspapers have? The editor gives him an idea and he works it out? For instance, we have two or three of our most distinguished ones in Chicago. Of course, as I understand it, the difference is the difference between the various artists, and then you may have a man like Ken Hubbard, who does "Abe Martin".

3593

Do you know him?

The Witness: Very well.

Chairman Myers: Where he works his own ideas and does his own cartoons, but here the editor takes the idea and hands it to the cartoonist. You don't do that, do you? You have fellows in different parts of the country?

The Witness: That is right. And we have found that it doesn't work out to advantage to have an artist or cartoonist work at a desk all the time.

Chairman Myers: To have them on production.

3594

The Witness: These fellows, even if they are almost tantamount to being on a salary, they are on a yearly salary basis, nevertheless we find if we leave them alone and let them work, then they do better work than working for us in the shop.

Chairman Myers: Your idea is to get different kinds of ideas and different kinds of presentation?

The Witness: Yes. I should have mentioned, in fairness to Mr. Webb, that although we may have to furnish all the ideas sometimes to all the cartoonists, we

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don't have to present ideas to Mr. Webb for these mountain boys. That has been his own and he does it himself, but when we get a submitted gag that comes from the outside, and if the joke is one concerning his subject, we might adapt it around and send it to him, even though it may not come in as a hillbilly idea in the first place, but that is just to assure his long stock.

3595

He goes along with his continuing series on his own.

I am not keeping any track, Mr. Brömley, of the number of sex and non-sex as we started to do yesterday, but I make the obvious point that that one is not.

3596

Next, page 54. That is a piece of sports fiction and I might characterize it also as a satire because the whole point of it is that a man who was a ballet dancer turned out to be so much more successful in the prize ring than he was on the ballet stage that he shifted to the boxing career as a profession and, of course, the obvious inference is a slam at the fancy type of pugilist who is on a bicycle all over the ring.

The next, on page 56, is an article about the Tanaka Memorial, and is a popularized explanation of the manner in which the militarists in Japan managed to turn the entire country to their own ambitions and plans, and it shows how over a long period of time the Japanese—at least that element among the Japanese—were calculatingly and consciously and with slow, deliberate design preparing a world-shaking scheme for the aggrandizement of the Japanese nation on a global basis.

3597

The author, Curt Reiss, is a European journalist, a German, who was in a concentration camp briefly

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3598

in the first months of the Hitler regime in Germany.

In 1934 he managed, after being released from the concentration camp, to move to Paris and since he had been brought up as a bi-lingual person, having spoken French and German interchangeably in his family circles, he started a new career in Paris where he joined the staff of the Paris-Soir, the biggest French newspaper, and the one most naturally comparable to American newspapers out of all the foreign newspapers.

3599

He was sent by the Paris-Soir to America as a correspondent, and he maintained the New York office of the Paris-Soir from, I believe, 1936 to 1940. I shouldn't say he maintained it by himself. As a matter of fact, he was the assistant to Raoul de Roussey de Sales, who was the chief correspondent in America for that paper, but with the fall of France, of course, the Paris-Soir ceased to exist, or, rather, became a Nazi paper, and he was cut off from his home base and we helped him become a freelance author.

3600

I say we helped him become that. I had known him for several years through contacts with the people in the Paris-Soir group in Paris, and when he lost his livelihood I suggested that he try making a living as a freelance journalist and author.

We began in 1940 publishing his articles on various phases of international affairs and he very quickly rehabilitated himself and, in fact, has become a much more important figure since then than he was before. He has written a number of books, some of which were direct outgrowths of his Esquire articles. I will mention some of those as we come to other contributions by him in other issues.

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Q. There is a cartoon at the bottom of page 56 which certainly has no reference to sex, has it? **A.** It is a sheer nonsense cartoon and it is a category which we refer to in all of our own estimates of what the nature of the different cartoons may be as pure slapstick. It is a brand of humor that I certainly would not call corny. I think that the New Yorker uses it a good deal as we do. I think the term for it may be "nut" humor. I have seen it so described frequently. The very point of it is its pointlessness.

3601

Q. It certainly has pointlessness.

I wish you would tell me the relation the subtitle has to the picture. To me it means nothing. **A.** It is ludicrous.

3602

Q. It says, "I'm afraid you've done it again, Phillips." Done what again? Walked up the wall or not? **A.** I'm afraid you have beat me again, overcome me again, and he has used the side wall, two corners of the room, in the manner of a fly to get up all over and do everything but hang from the chandelier in returning every possible shot sent to him.

In analyzing these things you have to bear in mind that since the time of at least Aristophanes there have been thirty odd dramatic situations available to all authors and playwrights, and perhaps half that many humorous situations available to authors of comedies and creators of cartoons and other comic material.

3603

There is no such thing as a new joke.

Q. This one has created a new one, as far as I am concerned. **A.** This man has created a third dimensional joke, a shot into the realms of the ridiculous, but it is a category of current magazine humor.

Its text equivalent is what we call the "shaggy dog" story. We have run a number of such stories. They are like olives; you either acquire a taste for them or you don't. You either

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3604

think they are side-splittingly funny or you say "Is that the end of the joke?"

The very pointlessness of them is what makes them the kind of thing that will break up a dinner party.

Chairman Myers: If you ever publish any more like that please send me a diagram of the text.

The Witness: That is what I am trying to furnish now.

By Mr. Bromley:

3605

Q. I don't see how anybody could see it. **A.** Take the one on the opposite page, page 57. There is a tendentious cartoon. We take some reasonably funny situation and just because it lends itself to a patriotic twist we use it as a commentary on the enemy.

I don't imagine you will split your sides laughing at that one.

Q. But I can understand that one.

Chairman Myers: So can I.

The Witness: Page 58, "West Point's First Captain is an inspirational article pretty frankly done as a piece of glorification of West Point tradition. As a matter of fact, the author, Thom Yates, is the publicity man for the academy. Call it a celebration and sketching in the background of the careers of those who in other days have been the First Captain of West Point.

For instance, 40 years ago MacArthur was the first captain and 56 years ago Pershing was the first captain, and other famous names in American military

3606

Arnold Gingrich—for Respondent—Resumed—Direct.

history are identified as having been in their day the first captain.

3607

The cartoon on that page is again one of that super-silly variety and the only explanation of it that you need, I hope—

Q. We don't need any for that; we can all understand that. A. It is a picture of the obvious. That is as old and sure-fire a cartoon formula as you can find. That is always good, large or small, for a full page, something that is so evident to every beholder becomes the point of the cartoon.

I should say the same thing applied to the cartoon on the opposite page where the young lady refers to the fact that some 89 guys in uniform are also very fond of her.

3608

We now come to a four-color section devoted to cartoons of various sizes and since this is a holiday issue, given a decorative marginal treatment to hold all these cartoons together and to give the issue as a whole a festive air.

The color motifs around the margins are seasonal holiday designs. The cartoons on this spread are all in slapstick vein, ludicrous exaggeration being the chief point.

The next spread, however, is an exception. These cartoons are of a totally different nature. Here we have the patriotic type of cartoon, the cartoon that is a commentary, done as it happens in this instance by a very distinguished pair of artists who unfortunately have not ever in this country managed to achieve the same recognition and fame commanding position that they achieved in Europe.

3609

These two fellows, Derso and Kelen, were practically the official caricaturists and political cartoonists of the League of Nations. They lived in Geneva for 15 years, up to the outbreak of this war. They are Hungarians originally. They

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3610

worked together as a team. No one has ever quite managed to find out just which part of their work has been done by which one of them.

The spread as a whole is a patriotic commentary, topical and political in the international politics sense.

The next spread again, just the obvious ludicrous situation of the juxtaposition of a temporary high value with a permanent high value. In other words, to point up the momentary pricelessness of a rubber tire by using it as a frame for a masterpiece.

3611

Now, with page 67 we come to a sports article which is directed primarily to industrial managers selling the idea of the value of organized sports for large industrial organizations. Pointing out how the Phillips Petroleum Company has managed, with its basketball team, to build a spirit of company feeling among its executives through their participation in the sports activities.

In other words, part of the makings of a Phillips Petroleum executive is his participation in their sports activities. As he goes up in the company his active participation in the sports may cease, but they use it as a feeding ground for the personnel and many other instances are cited how the same idea has been found to be of great value by any number of other industrial concerns.

3612

In the middle column of that page at the bottom there is a list of companies who have followed out this plan and who have found it of great value, and, of course, propose it to other companies.

The cartoon has no relation, of course, in that instance, on that page.

The next article, on page 69—do you want me to comment on the cartoon each time I pass one?

Q. No, not unless there is something peculiar about it.

Arnold Gingrich—for Respondent—Resumed—Direct.

A. Yes. That is a biographical article about Horatio Alger, whose name has become practically a legendary reference to our generation, most of whom are actually unaware that there was such a person, and his books are now practically unread.

3613

It is a historical piece and one that also portrays the success formula of the time and era of the American life, and the contrast is made between the spotless nature of his books with the anything-but-spotless nature of his own life, showing that he was some miles removed from practicing what he preached.

The article is by Stewart Holbrook, an author who has specialized in stories of the frontier and the backwoods and has done books about the timber industry and about many of the places and people of the Old West.

3614

The next spread, pages 70 and 71, contain one of the "Ruby Street" stories. The series was an offshoot of a book by Edward Harris Heth, called "Light Over Ruby Street." I read the book. It appeared, oh, I would say, about three years or three and a half years ago, and I found it the first funny Negro idea that I had come across since the days of Octavius Roy Cohen's "Sons and Daughters of I Will Arise," the old series that ran for so many years in the Saturday Evening Post.

3615

We had published this young fellow Edward Harris Heth as one of our discoveries some years back. At that time he was just out of Dartmouth and was living for post-graduate experience in Europe, and I got in touch with his literary agent Carl Brandt, from whom we have bought many things ever since the inception of Esquire, and suggested that he see whether Heth couldn't take these same characters out of this book "Light Over Ruby Street" and start a series of stories.

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3616

In other words, not let the neighborhood die with that one book but to go on with it and try to do a series of humorous stories. The basic idea of the humor is a combination of social satire—the colored lady of somewhat less than average mentality who has delusions of social consciousness. She thinks she is a social worker and she apes the behavior of social workers who come to visit them in their squalid neighborhood, and she goes around right after the social worker trying to ask the same kind of questions of her neighbor just as they previously had been asked by the social worker. In doing so she writes a little note as the social worker has made notations down in her own notebooks, and she writes these little notes and hands them to her neighbors all over the neighborhood, and the spelling of them is so ludicrous that it struck me as being somewhat comparable to that series the New Yorker ran "The Education of Hyman Kaplan," where the whole point of the thing is the distortion—I will call it almost the vivisection—of the English language.

3617

Well, this series began perhaps at the end of 1941. I know it ran off and on through 1942 and perhaps might be going even yet but I felt even though we did have some complaints about the series that when we did have some complaints about another story from the Negroes and from the Negro press, from what I might almost call the professional Negro, I felt it was not in good taste to continue a series that poked fun, no matter how harmless, at colored characters at any time when in relation to the war effort and the whole concept of the United Nations it just seemed wrong to go on with a series that in any way took advantage of a race difference, so I let the series die a natural death and did not go on with it.

3618

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I think that there was one or two, at the most, more of these in the series.

Page 72, a sports article about a big frog in a little puddle. The man who is to the second flight of organized baseball what Joe McCarthy is to the top flight. He has won as many pennants as McCarthy in the big leagues.

The cartoon on page 73 is again a ludicrous reshifting of emphasis. You take a seemingly casual line and build it up to a momentarily scarce commodity. The employer is serenading the reluctant workman by saying, "Say the word that will make me the happiest man in the world—say you'll be mine, Mr. Swejekowski for \$62.50 plus overtime." The obvious skeleton on which to hang all kinds of topical gags.

The next story, on page 74, "Strangers Defeated," a very fine animal story about the making—call it rather the taming of the spirit of a marvelous horse that the natives in the South African locale consider so dangerous that they begin to believe that he must in some way be bewitched, and the narrator shows how by patience and by care gradually overcoming the fear of the natives he inculcated in them the feeling of his own admiration for this magnificent animal, and I suppose the moral of the story is that the best things are the hardest to obtain but very obviously worth the trouble.

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3621

By Mr. Bromley:

Q. Who is the author? A. James Stern, a young Englishman who came to this country, as I recall, about 1938 or 1939. I had met him once or twice in England, and after he got over here he got in touch with me and I helped him make a few contacts in this country, got him a literary agent, and got him started on this side of the water. He

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3622

has done very well. He has sold stories, never outside the quality group, but he has sold them to Harper's and Harper's Bazaar. I should say perhaps never outside the limited class circulation group. He has not hit any of the big circulation slicks, but his stories are of a high literary quality.

3623

The next feature on the page opposite 74 is one of a series of songs of the United Nations, devoting a page to the National Anthem, or in the case of some of the occupied countries, say the French, to the song of the Fighting French, and this series, which ran through a good part of this year, and virtually all of the year preceding, devoted each month a page in color to a presentation of the words and music of the particular nation's best known or official song. In many instances they were used by the consulates of the various nations for distribution. As I recall, the Polish consul in Chicago—of course no longer the consulate except as of an exiled Government—sent out a large number of reprints of this feature.

3624

The artist is William Pachner, who was a very talented young Vienna refugee who came to this country in March of 1939. He came to Chicago and worked for us, well, almost on an employee basis, and in getting his feet on the ground through consistent publication in Esquire, he began to acquire enough reputation to attract commissions from national advertisers, and at the present moment he has left us to live in New York where his work is beginning to command a great deal of attention from national advertisers. He has done very well. He has a very high talent, and I would say that he stands astride both fields of commercial art and fine arts.

Mr. Cargill: Let this be off the record.

(There was a discussion off the record.)

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The Witness: The next full page color insert opposite page 77, one of the series of regular monthly color inserts devoted to the different types of airplanes. This series done by an outstandingly fine painter in this field has been extremely popular, and is one of the notable exceptions to the fact that the armed forces seem to demand only pretty bipeds as pin-up material.

3625

These have been collected and commented upon at great length, not merely by men in the air forces but by members of the various branches of the armed services.

3626

The airplane does seem to be the glamour item of this war and fellows in many other branches of the service are fans of this type of thing and have pinned them up and they have acquired a real following.

The article on the page opposite, the Future of Air Power, I will comment on generically, and that will save the necessity of commenting at great length and detail on other comparable articles.

This represents, simply in this one month, one example of a continuing policy of emphasizing aviation, of trying to educate the laymen in an appreciation of both the possibilities and the difficulties of this new branch of war effort.

3627

There is also in every issue at least one, and sometimes we have run up to two or three articles in an issue, on different aspects of the art of military aviation; that is, the use of air both as a strategic and as a tactical instrument.

Page 78, a mystery story. These are rather a rarity. It is very hard to get a true mystery in the short story form. The essence, of course, of mystery

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stories is suspense, and it is very hard to create suspense when the complications of the plot and then the unraveling of it are going to take place only in a matter of paragraphs away, instead of many pages away.

We search for them avidly because we consider mystery stories to be one of the most obvious favorites of male readers, but we aren't too successful in it, and it is relatively rare for us to be able to offer what is really a true mystery story formula achieved in short story form.

3629

The cartoons of that same topical nature—

Q. It shows a typical newspaper reporter, doesn't it? A.
Yes.

3630

The next feature, pages 80 and 81, consist of a type of article that has some reader participation value. We try in virtually every issue to include some one article that will stay with the reader in the sense that it will give him something that he can either talk about or perform a trick or show some one accomplishment that he has obtained out of reading an article of this type. You will find others that even go into the realm of languages, how to learn to speak Japanese overnight and astonish your friends—that kind of thing.

The next page, page 83, the Gilbert Seldes contribution for this month, the review of the "Star and Garter" show. Gilbert Seldes every month makes a topical contribution in some branch of the living arts. If I can refer to an editorial page in one of these issues I think it will shorten the record by letting that editorial tell all about what Seldes does, and who he is, and how long he has been doing it, and what his particular field is.

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That editorial, devoted entirely to Gilbert Seldes, I guess is about the August editorial—I refer you to the editorial on page 6 of the August, 1943, issue, entitled "The Inexhaustible Exuberance of Gilbert Seldes."

3631

I realize that this article has been read so often in this room that I hesitate to linger on it any longer other than to say that in that editorial I think a good explanation of what Gilbert Seldes does in and out of the pages of Esquire will constitute a sufficient answer to the interpretations that have been put upon this article during the course of these proceedings.

Next is page 84, the regular theatre department of George Jean Nathan, in which he grinds two axes, or, let us say, drives two nails, one against the wrenching out of shape of all the dramatic unities in the name of patriotism, and the very low grade of drama concocted as an answer to the topical demand for war plays.

3632

I would like to point out in this article the fact that George Jean Nathan makes virtually the same point that Seldes made in the famous "Star and Garter Blues," and I don't believe anybody has called attention to that in all this discussion of what Seldes was talking about in his "Star and Garter" review, and I would like to turn for a moment to the carry-over of this feature and simply call your attention to the last paragraph on page 142, reading:

3633

"The present emphasis on strip teasers in the burlesque revivals will not lead to prosperity in the long run. If, like Michael Todd in his show "Star and Garter," the impresarios, safeguard the all-important low-comedy element with such gala old burlesque clowns as Bobby Clark and such gay zanies as Professor Lamberti, the big money will no doubt continue to roll in, but if, as in "Wine, Women and Song," the emphasis is on women who take their duds off, with

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weak regard to the comedy, burlesque is ultimately doomed to go the way of all flesh.

"Mark Twain may have been right when he remarked that he would rather look at Lillian Russell stark naked than at General Grant in his full uniform. But I doubt that even Mark would have rather looked at Lillian in that state than at, say, the beforementioned Mons. Clark in his misfit suit, with his cigar butt awiggle in his mouth, and with his cane bouncing up periodically and slamming him grandly on the nose."

3635

In other words, Nathan says in a paragraph at the end of his theatrical department for this month essentially the same thing that Seldes says in his full length article about the same show.

The gate-fold opposite page 84 is a full size double-spread reproduction of a fine old English sporting print, the kind of thing that you call suitable for framing. We try every year in the holiday issue to provide features of this nature where there is a contribution made, you might call it a reader dividend, the inclusion in the issue of something of intrinsic value, a reproduction, as in this case, which by the normal standards of prices charged for prints of this character would be worth about the price of the issue as a whole.

3636

The reverse side of that gate-fold is the Hurrell photograph, one of a continuing series of Hurrell glamorizations of Hollywood ladies, a popular feature that has continued in the magazine for some time, although it was formerly run in black and white in a smaller size.

The next page, 89, "The Sporting Scene," a regular feature by Herb Graffis, a part of our sports emphasis in addition to the sports poll in each issue, conducted by Herb Graffis and Ralph Cannon.

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We carry this sports column, which in some months may be a miscellany of short comments done in the manner of a columnist, a sort of grab bag of sports shorts, and in some other months may be devoted entirely to some one sports subject.

3637-

Q. Who is this author Graffis? A. Herb Graffis is a Chicago newspaper man, originally from Indiana. He has long been a regional favorite in the area around Chicago.

Herb Graffis is to his followers and fans what Westbrook Pegler used to be in his sports writing days, before he became a columnist in other fields.

In the last few years Graffis has gone the same way. He has begun to write a general column, a daily column in the Chicago "Times," and he has a magazine of his own called "Golfing." Between that magazine and his daily column in the "Times" and his work for us he manages to stand astride of the sports field and the field of subjects of national interest.

3638-

This is a case in point, this article right here, which is devoted to the use of sports by the Navy in its intensive conditioning program given to the Navy cadets.

The next feature, on page 91, is also a regular department, and in this particular instance for a holiday issue is devoted to various suggestions for gifts, and also to recipes for holiday parties; that is, recipes for serving of wines and champagnes for holiday occasions.

3639

The next feature, pages 92 and 93, is the previously mentioned "Esquire Sports Poll," a regular feature of each issue, and on that we have found it to be of extreme value, and I would have to rate it at the present time as being next to the "Sound and the Fury" in its reader interest as evidenced by the mail we get.

Of course, a part of that is attributable to the technique

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with which this feature is conducted. We have a large list now of sports writers, radio broadcasters in the field of sports, and other people more or less intimately connected with the sports field, to whom we send a questionnaire each month, and their reactions and comments to various questions in the field of sports serve as the grist for this monthly feature, which is made up for the most part of their individual expressions of their opinions as concerning questions at issue in the sports world as of the given moment for each issue.

3641

Chairman Myers: Referring to The Sound and the Fury, why do you refer to it as that in there?

The Witness: That is very interesting and I had forgotten it entirely. That takes me back ten years now. Sound and Fury signifies nothing, of course, except the Shakespearean quotation.

Chairman Myers: "It is a tale told by idiots".

The Witness: Signifying nothing. As I mentioned yesterday it was our way of putting in all these wild-eyed comments and more or less written that way with the hope that they would be inserted.

There was an author, named Faulkner, and back at that time he wrote a book called "The Sound and The Fury", so we just used that rather than the Shakespearean reference as the title for the feature.

Chairman Myers: I wondered, because sound and fury seemed so much more effective to me.

The Witness: Well, we divided the thing deliberately so, because we had two types of articles in there; the noise that is created by this or that type of article, the tempest in the teapot, and the squawks that came in. You have those two categories in

3642

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there. You could also say it is a way of adapting it to the usual type of title for them, the type of feature "Brickbats and Bouquets" compliments and the opposite.

The next regular feature on page 94, "The Edibles". Devoted every month to some phase of cooking with recipes included. It may be surprising to see that in a man's magazine, but you would be surprised to see how much mail comes in on this feature and how many male readers very definitely and evidently do actually try out and put into practice the very good recipes contained from month to month in this feature.

There are a lot of men who like to cook and who do follow with great interest these articles on how to do with limited facilities some of the things that are done by chefs with limitless facilities. It has been a very popular feature in the magazine.

There again I call your attention to the fact that the cartoons in both instances on that spread are related to the subject matter. The one in the lower lefthand corner, the silly question: "Cream or lemon?" by one of the two shipwrecked sailors who very evidently have nothing but cases of tea as their only sustenance; and the cartoon on page 95 with the use of the second color, the little green tint plates to resemble the dark green of spinach, and the gag line referring to the inexplicable nature of the food being consumed.

Page 96, "Esquire's Five Minute Shelf". That title is one that has been the property of the magazine rather than of the individual contributor ever since the magazine began.

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There again I make one exception. It began in that form with the first monthly issue rather than with the first quarterly issue, but as of the last three years or so, from 1939, this department was regularly conducted by William Lyon Phelps, who was one of the best friends the magazine ever had. Long before he began to contribute to it regularly he used to write in about different stories and particularly different editorials from time to time. He was one of our most articulate fans, and he got a great kick out of his Esquire job during the last three years of his life, that he held it and we miss him very much.

3647

Chairman Myers: He had the greatest sense of humor of any man I ever knew.

The Witness: There is another editorial page which contains an insert just like the insert in this instance from the Army camp papers, about William Lyon Phelps, that I would like to call your attention to. I believe it is the November editorial page, which contains as a boxed-in insert, a very moving tribute to William Lyon Phelps by Walter B. Pitkin entitled "Manprints". It serves as a sort of memorial notice to the passing of William Lyon Phelps.

3648

Next, the Varga calendar, which is an annual feature presented in the January issue as in 1943 and 1942. Begun December, 1940. We first included it in our December issue and then as we developed the idea of two holiday issues in the year, we moved the Varga girl over to the January issue and retained only a pre-view of the Varga calendar in the December issue. To relate the two issues as holiday issues we would give a couple of pages of the Varga calendar in December and then the Varga calendar in its entirety in the January issue.

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I think this feature has perhaps had enough discussion. As a calendar it has been one of the most successful things we have ever done. We have sold these in really enormous quantities, increasing numbers each year.

3649

As a separate calendar, in addition to and apart from its appearance in calendar form in the magazine itself. As a separate calendar there is the little boxed-off days of the individual month put on each of these pages.

Mr. Cargill: How many of these calendars did you sell; do you remember?

The Witness: Well, it has been going up. Mr. Cargill, each year. It is up in the millions now. We sold, I think, something like 300,000 the first year. These figures will probably be available in specific form, but roughly say three hundred and some thousand the first year, and five hundred and some thousand the next year, and then they ran up to nearly a million, and we began to produce it in many different forms. That is, other kinds; the basic calendar, then the desk calendar, the wall calendar; all containing the same pictures.

3650

Now it has become almost a separate branch, a little business within a business. We have a Varga calendar division and all those orders are handled by that and we now have agents handling the Varga calendar on a regional basis around the country.

3651

The next feature—

By Mr. Bromley:

Q. Before you leave the Varga calendar, haven't you got some orders while you have been down here from the Army

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3652 and the Navy and what not? A. I believe we have. There was an order of 50,000, as I recall it, from England, I believe.

Q. For our Army? A. Yes, not for the English Army. I mean for our Army in England. Just recently received.

The next feature, page 109, is a special feature and not typical of every issue. This is something in the nature of an added attraction in a holiday issue. It is a condensation of a very important book which made a lot of speculation and some promises on what might happen in the field of aerial warfare, and laid down a blue-print for the function and role of air-power in our war effort, and as of today a good deal of that blue-print has been filled in by events that have become actualities.

3653 The book is "The Coming Battle of Germany", by William B. Ziff, the editor and publisher of "Flying Magazine;" the man who has been intimately connected with the development of aviation ever since the last war, and even before the last war.

It was Ziff, by the way, who published in his magazine, in one of his aviation magazines, the articles by Billy Mitchell which caused such a controversy and which, in fact, led directly to his court martial. Many of the statements made by Billy Mitchell in trying to rouse the military authorities to the potential value and obvious need of aviation in the future, were first published in Ziff's magazines.

3654 The presentation of the condensation here is in the form of a sort of primer of aviation, dividing the book up into its most cogent passages, and as quoted on page 110, breaking it down into lessons on how to apply air-power as a strategic instrument, high-pointing these different basic premises, axioms, and corollaries laid down by Ziff in this book.

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Q.—You have told us who Ziff is? A. I have mentioned what he is, but who he is, he is an ex-Chicagoan. For a long time he lived out near where I live, northwest of Chicago. He had a farm out there just a few miles away. Now he lives near here. He has a farm over here in Maryland. His center of activities since the war has become Washington. He is active in an advisory capacity, civilian advisor, to the air forces. He has been sent on trips on behalf of the air forces to England. As a result of one of those trips he issued the R. A. F. special issue of Flying, which was a remarkable single volume containing all the technical and popularized information about the Battle of Britain and the probable future of the R. A. F., issued at a time when it was much less evident and obvious than it is today that the British concept of the use of air power would prevail over that of the Luftwaffe.

Page 117, one of a series of color inserts devoted to various game birds of America. These are the sportsmen's color print type of thing which has been very successful, done by Walter Bohl, whom we claim as a discovery of ours. He is a young man whose sporting nature prints were first published, oh, many years back. I would say all of eight years ago and they were quickly taken up by such sportsmen's outlets as Abercrombie & Fitch in New York and Von Lengerke and Antoine in Chicago, and from there led to sales to a great number of galleries throughout the country.

A long, continuing series of monthly inserts in color devoted to the various breeds of dogs. In each instance, a champion typifying and representing the entire breed, photographed in full color by Henry Waxman. The origin of that feature dates back to the time when Henry Waxman called on me with a big portfolio of girl pictures. Waxman

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had specialized as a girl photographer, girl pictures for advertisers. The toothpaste ads, all the various types of advertisements that use the pretty girl color photograph, and in showing me a whole lot of examples of his pretty girl features I pointed out that we had the Hurrell photographs as a regular feature of each issue and we weren't in the market for pictures at that moment, and as he started to pack up his samples and put them away, one photograph fell out of the file and I said, "What is that?"

He said, "I am sorry; I didn't mean to have that one. That is a picture I was delivering to a friend. I took a picture of his dog."

3659

And I grabbed up the picture and said, "If you will come back with an armful of pictures like that, I would be interested in seeing them", and with great reluctance he agreed to begin the series. He pointed out that he had never been a dog photographer and didn't want to become one as a career, but from that point on he went ahead with these studio shots in natural color, of one breed after another, and I think as of now we have probably covered, oh, better than thirty of the different breeds.

These have been very popular, of course, among dog lovers. I have seen them in many kennels where the entire series is mounted and framed and set along the wall as a wall decoration of the kennel.

3660

The key on page 121 answers your previous question, Mr. Bromley, as to what is contained in the Covarrubias pictorial map of America on page 47 of this issue. This can be turned to for ready reference to identify any portion of the entire continent in terms of interpreting Covarrubias' painting.

"Ad Libbing with Esquire", on page 122, is a feature done by one of our gag men or idea men, Bruce Patterson, who

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is regularly employed in our Chicago office as a furnisher of ideas for the cartoonists, and in his diddling around with various ideas for humorous features we were intrigued by a lot of these things that he did that did not lend themselves to pictorial use, but incorporated themselves as attractive tid-bits of text; so we began this feature as a sort of rough equivalent to the "Talk of the Town" item in the *New Yorker*.

3661

Commentary with a light touch interspersed with jokes and gags just for their own sake.

In some instances it goes into the field of satire, as a take-off on the advice to the love-lorn, the "Dear Doctor Diddle," on page 123, the right hand column.

3662

The next two pages, 124 and 125, again a related cartoon. A tie-up between the cartoon on page 124 and the article on 125 pertaining to the subject of clothes. In this instance, a page on the care and the preservation of the various items of the Army uniform.

There are inserted features, small filler type of features on pages 120 and 126. Things that are set in as short humorous fillers to break the monotony of unrelieved type matter in the carry-over pages. These are by Parke Cummings in both instances.

Parke Cummings has contributed this kind of humorous item to the Saturday Evening Post, Colliers, and many of the large popular magazines over a number of years.

3663

Opposite page 126 is a typical holiday issue feature representing the conversion to the holiday season of our regular fashion pages, which, in this instance, are devoted to gift suggestions for the holiday season.

These are photographed in full color in direct representation of the actual objects themselves, followed by, after four pages of color reproduction, a gift selector, which is

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3664 a shopping memorandum with suggestions opposite various categories of gift shopping.

It makes suggestions as to what might be a suitable present in the different fields.

Next, the cartoon on page 134, making fun of the obviously ludicrous situation where a prima donna of the football field would refuse to go forward unless the other tanks had run interference for him.

And that as far as our beginning pages are concerned, completes the issue, although we do carry on some front cover to back, smaller features, fillers to sustain the interest from one end of the magazine to the other.

3665 An example of that is on page 140, a self-portrait of William Allen White. This is a regular feature in which we ask men prominent in many fields—we have had a number of Senators, a number of Congressmen, a number of prominent actors, authors, and public figures in many fields—to draw their own picture and express their own opinions on a number of more or less pertinent questions addressed to them, with the result that you have a self-portrait and a self-interview.

One of our regular fashion pages, on page 156—this is the typical Esquire fashion page appearing in reduced number in the case of a holiday issue, because the gift pages preempt so much of the space, but this kind of a page serves to stand as the type of which we have anywhere from four or five or six in a normal issue.

3666 Another one, on page 166, in that instance devoted half and half to civilian and military fashions and accessories.

Another feature on page 194, a continuing feature devoted to notes and activities of sports figures who are now in the armed services, giving some background about their exploits in the past on the field of sports, and their feats of distinction as of today on the field of battle.

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The picture in the center of that page, or rather in the center of those two columns, is an old-time picture of Admiral Ghormley back in 1900 when he was quarter-back on the University of Idaho football team.

3667

A great deal of our sports material is given a military treatment and our sports department has served as a funnel for a lot of morale information and inspirational type of advocacy of strenuous life as a preparation for military activity.

This feature continues on page 196 and, on page 197, there is a reproduction of some cards received from German prison camps, sent by prisoners in the R. A. F. In both instances I believe these are flyers who were shot down.

3668

And here is one instance where I believe I would agree with Mr. Hassell that we published something and are quite willing to let it stand as an estimate of what the readers think of the magazine.

They are difficult to read, but one of them goes:

"Dear Sir: As prisoners of war for the past two years may we add to your vast store of testimonials the appreciation of this camp for Esquire, the most sought-after magazine in the camp.

"Our great drawback is that one copy has to pass around two thousand of us. Is it possible that among your readers there are a few kind souls who would send an extra copy?"

3669

"We should also welcome mail from anyone who cares to write."

"This is the main Royal Air Force camp and we all vote for bigger and better Varga girls."

"Wishing Esquire every success, yours sincerely,

"Sergeant G. Peter White, Prisoner of War 235."

"Sergeant A. D. Lancaster, Prisoner of War 81."

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The other, right beneath, from another prisoner of war, signed "Steve Travis" reads:

"Wonder of wonders. Yesterday I found a back number of good old Esquire, the first I have seen for over a year. Sneaked over to a seat in the sun and hungrily devoured it from cover to cover. Boy, it did me more good than six food parcels. Am taking time out to let you know how much I appreciate everything in it. There is a waiting list of over fifty fellows who had better get cracking on it again. Best magazine I have picked up since I was shot down last year. Sincerely. Steve Travis."

3671

We printed these letters in good faith at the time, after checking with the Post Office on the possibility of answering these requests for copies from our readers, and unfortunately there was a change in the regulations between the time we went to press with this and the time that it appeared, with the result that we were in quite a jam because people responded to this from all over the country and went to their post offices and tried to send magazines to these prisoners in the prison camps and found that the change in the rules made it impossible to send anything to a prisoner of war unless you were, I believe, either a relative or had a specific permit to do so.

3672

Q. What arrangements, if any, have you made with the War Department about sending the magazine out for the use of the armed forces? A. As far as our regular subscribers' copies are concerned, they follow wherever the soldiers go. But in addition to that we have had copies bought by the Army for the various post exchanges overseas. That has been in increasing quantity ever since July, 1942.

It began with, I believe, only a matter of about 3,000 copies at that time, and has gone up month after month since to where I believe the figure is now something like ten times as many.

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Those copies are bought by the Army at the regular wholesale price, the same as any of our distributors would buy them. Then they are, as I understand, sold at the P. X.'s post exchange at the same wholesale price. In other words, they don't charge them anything for it. They enjoy an Army preferential rate, as I understand in common with many other things in the P. X.'s.

Those copies bought by the Army for sale by the Army in its own post exchanges, represent one segment. Then, of course, the normal distribution outlets take care of Army camp sales in this country where the local dealer will supply the Army camps, to the best of his ability, the number of copies he has, because there is a great shortage in those areas now.

I can recall a news dealer located near an Army camp where there was a hospital, writing in again and again asking for more copies and enclosing correspondence from the camp commander there demanding 1,000 copies, and he had supplied 100 copies—in other words, one-tenth as many copies as they asked for.

Then, we have just recently begun to supply the Army Special Services Division, at their request, with copies for the wounded and for hospitals and for detached or isolated military units who are away from any of the normal post exchange coverage.

The Army obtained for us a special quota of paper tonnage outside of our regular W. P. B. allotment, and as a result of getting that tonnage we are contributing those copies in addition to those that are handled through the post exchanges, and that began with our current number.

Of the November issue we have supplied, I believe, in the neighborhood of 50,000 copies, and as of the January issue that will be in an increased number, something like 60,000 copies.

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They are on lightweight paper and, as far as the now current issue is concerned, the only difference between them and regular copies is that they have an inset legend printed right in on the front cover saying "These copies are supplied with the compliments of Esquire for the exclusive use of the armed forces."

3677

As of January, when the production change-over can be accomplished, those copies will contain no advertising whatsoever. They will be a special edition containing only the editorial matter, and in some instances, where the removal of the advertising creates a make-up difficulty there will be extra editorial matter thrown in in this special edition for the Army Special Services Division.

Q. Now, turn back to page 137. Who is the creator of that cartoon? A. Bill O'Malley, a cartoonist with whom we have dealt for a long time, and who has contributed pretty regularly to most of the magazines.

I am quite sure I have seen his cartoons in Colliers and in a number of the magazines. He is an old-timer.

3678

Q. Do you know whether that is an idea that he thought up or you thought up, or some of your employees thought up? A. I don't recall in that specific instance whether that idea was sent to him as one that was done inside the house or one that we had brought in from the outside.

I am pretty sure it was sent to him as one of a bunch of gags to be made up into drawings. We do that pretty generally. We don't send them one at a time, but we send a group and they will come in in a bunch.

Q. Did you pass on this cartoon before it was published?
A. Yes.

Q. Yours is the final responsibility? A. Oh, yes, surely.

Q. Did it occur to you that it might be considered to be obscene or indecent? A. Not by the wildest stretch of imagination.

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Q. What inference did you get out of it, or what inference do you think is the reasonable inference which flows from it? A. The obvious and reasonable inference to me is "What a life, sitting there drawing the nude model".

3679

It is the oldest gag in the world. It goes back to Johann Strauss, Artist's Life, the life of Reilly. It is a contrast between what I used to do and what I am doing now.

It reminds me of a gag I saw so many years ago—I don't remember the magazine in which I saw it or how long ago it was—I was very young at the time—but it showed an overstuffed capitalist type running wildly across a field, being chased by a bull, and the gag line underneath read: "I wouldn't do this for \$1,000 and here I am doing it for nothing."

3680

There he is sitting up on a roof top for nothing and to think what he used to be doing.

Q. Go back to page 123 for the moment. Did you approve the "Dear Doctor Diddle" column? A. Yes.

Q. Who wrote that? A. That is written by Bruce Patterson, whom we call Beep. You notice the "Beep" in the lower right hand corner of the page, being "Bee" and "P". The headings are done by him as is the little device for the heading there "Ad Libbing with Esquire."

I think this is all his material in this instance. I do not believe there is anything in here that isn't of his own.

3681

We from time to time would feed even a column like this if we got related material that seemed to be a suitable contribution for it. We would drop it in.

Now, this is an instance where after it was called to my attention—that is, in studying the citation and the specifications—I talked to him about it and received confirmation from him that as far as any fourth, fifth, sixth, or seventh meaning of the word "diddle" was concerned, he

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3682

had never even given it a thought and, although he is not a very young man—he has a son 23 in the air force—he professed never to have heard what I think Mencken referred to as the fourth or fifth meaning of the term "diddle".

3683

I have heard it. I am less innocent than he, apparently, but I can recall as a matter of 25 or 30 years ago, hearing somebody among the kids when they saw a marquee, one of those canopies that comes out in front of a house when there is a wedding—I have heard a kid say to another "Hey, legal diddle", obviously a sex connotation. It is not a matter of not being able to account for the possibility of there being one, but it is a matter that never occurred to me, or, as far as the creator of this thing is concerned, to him.

In my discussions his contention was that he never heard of it.

Q. You didn't publish it then to use a nasty word, did you? A. If you were just looking around for a nonsense name you might have called it "Dear Doctor Fiddle", or "Dear Doctor Dopey", or "Dear Doctor Yes and No", or "Dear Doctor Maybe Perhaps".

3684

The only possible—I won't say the only possible—but it seems to me that the overwhelmingly probable interpretation of that name is one that could be expressed by "Dear Doctor Futile".

Here is silly advice, silly answers to silly queries from silly people. It is sheer nonsense.

I use the term "nonsense" advisedly. You can go back to a nonsense rhyme for a comparable use of the word "diddle". You have:

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"Hey diddle diddle
 The cat and the fiddle,
 The cow jumped over the moon.
 The little dog laughed
 To see such sport
 And the dish ran away with the spoon."

3685

I have never known what that means and I have heard it all my life, but I can imagine doing a good job on it if I wanted to find sex connotations in it.

The cow jumped—"jumped" is a dirty word, and so is "the moon"

Q. Is this in a way sort of laughing at question and answer columns in the daily papers? A. Yes, a parody, a take-off on the absolute stupidity of the questions which sometimes is only exceeded by the answers.

I would have liked—I am not trying to talk for the sake of what I want to get into the record exclusively—but I had wanted to make as brief reference as I could to a couple of things in February and March.

Q. Let me ask you this first. In a general way, would you say that the description of the January issue is typical of the contents of all the succeeding ten issues here in question? A. Yes, with this exception. As I said yesterday, in discussing our editorial formula concerning which you asked me some general questions, I answered that we have a formula which averages out over the year and that is not so regularly constructed that you can lay down one issue on top of another and find the same thing on the same page, issue for issue. I think it would be a frightful thing if we ever became as grooved as that.

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That is why, if we had the time, I would have liked to give you a diagnosis of the anatomy of Esquire, would

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have liked to take the first quarter of the year, for instance, and go through January, February and March, and in the course of any three issues strike an average and you would have a normal issue.

I mean, you would have the things covered that will recur with sufficient frequency over the course of any one year or over the course of five or six years, to be able to—

Q. Instead of doing that, won't you just briefly indicate any extraordinary features in the February and March issues which differ from what you have described as appearing in the January issue; say? A. Yes, sir.

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Mr. Cargill: Could he take the three months, July, August and September possibly? Would that be a representative three months?

A. No, because in the course of infrequent appearances over a year, sometimes a thing that won't be in one month will be in the following month and then won't come back again for several months.

For instance, there is a recurrent feature in February—that is an annual feature as it happens, in that instance, one that comes every year—something we are building up as another attribute of the magazine.

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We have a sports program and this, as it happens, is in the field of music, a jazz program upon which we have embarked. Somebody once said, "The truth has twelve facets," and I would like to polish three or four of them in trying to characterize the magazine as a whole. I won't go through page by page. I promise you that. We finished that with January.

Q. You have mentioned jazz as a new feature in February. What else is new? A. The jazz article is an all-American band—

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Mr. Hassell: What page?

The Witness: Page 74 of the February, 1943, issue.

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Now, in that issue it is announced that this will be an annual feature. It began last February, conducted by Robert Goffin, who is one of the foremost of the international authorities on jazz, as a branch of music, and even though he is a European, the first recognition of American jazz as an art came from abroad.

Fellows like Robert Goffin and Panassie developed a serious recognition of jazz ten years before there was any sign of it in this country, and Esquire was the first general magazine in this country to treat jazz music as a serious subject, and an art form warranting the attention of collectors, the collecting of jazz records.

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That article appeared ten years ago in the February, 1934, issue, and so now, with the next coming February issue, we, for the second time, name the all-American band, the outstanding performers on each of the instruments in the classic jazz orchestra, and the performers, who are selected by a group of 16 of the outstanding authorities in this field. There will be a poll of these experts as to who are the dominant personalities in each branch, and then we are going to put on a concert. In other words, last year's all-American band existed only on paper. This year's will be brought together for a concert, and we are going to hold it at the Metropolitan Opera House. That will represent the first time that jazz music has invaded the always sacrosanct precincts of music in this country.

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And the affair will be conducted as a benefit with the entire proceeds going to a war charity.

Q. What other feature is there that is new, either in February or March? A. I would like to comment on the article on page 23 of the February issue, because there is another basic point involved. If you hold that article up to the light you will see that the answers to the questions propounded in this full-page quiz on air power are answered through the page.

Chairman Myers: What page is that?

The Witness: Page 23 of the February, 1943, issue.

Now, my one reason for wanting to comment on that is that you can see the correct answers are shown in the little square. After you have taken that quiz for yourself you put down whether it is "A," "B," "C," or "D," and write it into the box and hold it to the light and you see whether you are right or wrong on your answer to each of these questions.

My reason for wanting to comment on that is because it touches upon one of the basic reasons for the success of this magazine.

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We have been, as I told you in my prefatory remarks the other day, trying to account for this phenomenon, this magazine that appears to have different facets, depending on the angle of approach taken to it. This magazine has been characterized ever since the beginning by a pioneering attitude in the fields of reproduction, or call it the mechanics of publishing.

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We have been experimenters who have made innovations and have done stunts in the use of paper and printing, and those things have been one part of the entertainment value, of the personality of the magazine.

In going behind the scenes in that respect I would point out that David Smart, who in the beginning of our business handled the production end entirely back in those days,—where all we did was the reproduction of men's fashions in color, that a large part of the success of all these ventures lay in his imaginative use of existing facilities and a pioneering into other fields, for changes and differences and novelties and variations from the usual accepted run-of-the-mill routine type of publication practice.

That in the ten-year course of Esquire it has accounted for the introduction of the gate-folds, of the use of various kinds of paper, some of which had never been employed before in this field, and I simply like to stress it as being one aspect of the character of the magazine.

The editorial at page 6 of the February issue represents a follow through from the letter, to which I called attention in the Sound and the Fury on page 10 of the January issue. I commented yesterday on the reaction of the Negroes to the one story in our November, 1942, issue, which we had presented as a truly amazing performance by a 16-year-old Brooklyn high school boy, Elmer Grossberg, who sent it in to us, and we published it, thereby adding him to our roster of young authors put into print for the first time. I don't know, but I think that would be a record, getting the first story accepted at the age

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of 16. I don't remember if we have ever had an author break into our pages that young.

3700 This story we thought of as being exceptional in its literary merit, and as pointing a beautiful moral for the appreciation of the problems of the minorities as a whole. This was a story that showed the brutal handling and mishandling of a young Negro boy by the plug-ugly employee who was a professional beater attached to the sheriff's office. The kid is beaten within an inch of his life in trying to make him confess to the theft of an automobile, and after he has been restored to consciousness they tell him "Now, you are a good Negro. After all we didn't mean any harm; we just made a mistake. We just found the guy that really done it, and believe you me if you think you got hurt wait until you see that fellow," and they ask him, "Do you like ice cream, do you like to go to the movies," and told him, "If you don't say anything about this to anybody else, just go home, and if you don't tell anybody about being beaten, why, we will buy you some ice cream cones and take you to a movie."

36 Well, the story to us looked perfectly obvious in its intent; it was certainly anything but one of attacking the Negro race. Here is a story which takes the point of view of the underdog, and yet by misinterpretation and by an undue sensitivity we were given an unmerciful going over by what I call the professional Negroes, because in the course of this beating scene, where this little Negro boy is being almost murdered, he is being addressed as "nigger." Well, "nigger" is an offensive word; it is a word that they don't want to see in print, so we were given

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a terrible going over in the Negro press, and by any number of letters of this same type as represented on page 10 of the January "Sound and Fury"; and this editorial on page 6, in reference to the entire incident as a whole, contains a few sentences that do meet with the voice of policy, what this magazine believes in, always has believed in, and always will believe in, and I would like to insert a few of those sentences at this point.

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"If you have followed this magazine more than casually over its nine-year career to date, you know that we have said, early and often, that we would never knowingly offend against religious or racial sensibilities, while reserving the right at all times to offend all other kinds of peculiarities, prejudices, or bigotries however and whenever we felt like it."

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Then skipping over to the bottom of that page, toward the bottom of the righthand column on page 6:

"We as a nation are fighting against the attempt of one race to set itself up in mastery over others. We are fighting that tendency wherever it shows itself, all over the world. Hence, in all conscience and logic, we must fight that same good fight right here at home.

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"Esquire began fighting that good fight long ago, even before it became fashionable. It will never abandon it even if, as appears now most unlikely, it should ever again go out of fashion.

"Meanwhile for so much as a single word of affront, in its column, to the Negroes, or to any religious or racial minorities, it herewith apologizes in all sincerity and without reservation."

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That explained my reason for dropping the "Light Over Ruby Street" series, the Miss Geranium Finn humorous stories, which harmless and innocent as they were in their intent, portraying the foibles of a comic character in a colored neighborhood, were nevertheless dropped overboard to avoid any possible suggestion of taking an untenable position in relation to racial minorities.

By Mr. Bromley:

Q. Now, in the February issue you inaugurated a new feature in the comic strip called the "Exploits of Esky"?

A. That is true.

Q. How long did it run or how long did it continue?
A. We began with February and continued through June. I don't think we had it for July. I would have to look.

Q. That is right. A. It is not July?

Q. No. A. That was inaugurated in the February issue with a little prefatory page, page 90; an introduction page. That is our usual practice in introducing a new feature.

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Q. Now, what can you say about its acceptance by the public, or lack of it? A. It went over their heads. It was advertised beforehand with an announcement of intent on page 90 of the February issue as an adult comic strip which would be a take-off and parody of all the comic strips today, ranging over the entire field of comic strips, such as the World in the Future one, Buck Rogers, such as the sexy strips, as that of Alex Raymond and Flash Gordon, where ostensibly these comic strips are for children and yet they had always struck us as being, in the light of its emphasis and in going through the feature as a whole, as being something entirely different. We thought, and the creator of our strip thought, he was being sufficiently ob-

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vious and unchildlike and transparent in his attempt to make light of and belittle and poke fun at and to exaggerate, after the immemorial habit of caricaturists, people who rib, or parody a thing, of the salient features of the things you are parodying.

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Q. Now, I find it appeared in the July issue and that is one of the things complained about. Was it thereafter discontinued? A. I believe it was July. It was about that time that we dropped it because it just didn't ever catch on. People reacted to it as a waste of space. I think in going through the issues we can find references probably reproduced in the Sound and the Fury about the pointlessness of the thing. That is, they didn't feel that it warranted the space that it was taking up, and it was a gag that in Broadway parlance had laid an egg.

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Q. That is, it had failed? A. It had failed to strike a responsive note.

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Q. Now, are there any other authors in the succeeding issues whose names you particularly want to mention? What about Jesse Stuart? A. Oh, yes, Jesse Stuart is an author we have published. I believe his count now would probably be forty-four or forty-five stories over the past seven years. We began with Jesse Stuart in the summer, I believe the September issue of 1936.

He is a true authentic regional writer whose locale is in the Kentucky hills. He is with serious intent what Paul Webb is with comic intent. Jesse Stuart is the voice of the hill-billy.

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Q. What about his national reputation? A. He has written these stories that are almost poetry in prose. The language is one that has survived and is being spoken by these hill-billy people in their isolated section, and it is a language that is a carry-over from Jacobean times, and

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3 3712 these stories have won the admiration of critics and have been considered an important contribution to the literature of our time.

The "O'Brien Anthology," during the years of its existence, never failed to give three stars to a Jesse Stuart story. Every single time he came to bat he was a home run so far as O'Brien ratings are concerned.

His work for Esquire has been the difference—as he has often expressed to us—between literally life and death. That is between hardship and sustenance, because in the long row he had to hoe in winning literary and artistic recognition, financial rewards just didn't seem to follow.

3 3713 Chairman Myers: Mr. Bromley, is this a convenient place to stop?

Mr. Bromley: Yes, sir.

Chairman Myers: I assume you will have some more further direct examination?

Mr. Bromley: Not much.

Chairman Myers: We will meet again at 9:30 Monday morning.

(Thereupon, at 12:02 p. m., the hearing was adjourned.)